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ABSTRACT

Federal statutes and directives regarding national origin students is the subject of this technical assistance module. It is a guide for trainers who seek to familiarize education personnel with the legal aspects of providing services to limited English proficient (LEP) students. Nine activities are described and materials, including 17 transparency masters and 2 handouts, are contained within the module. Background readings for presenters deal with legal matters; the first is by Gloria Zamora and the second is a chapter from "Bilingual Education and Bilingual Special Education" (Fradd, Tikunoff). Goals for the participants are the following: (1) to become familiar with the services available through Title IV of the Civil Rights Act for national origin minority populations; (2) to become familiar with the federal legal requirements concerning LEP students; (3) to become familiar with procedures necessary to insure the rights of LEP students; and (4) to develop recommendations for meeting the needs of LEP students enrolled in the local education agency (LEA). The suggested time for completion of the module is 3 hours. Nine training modules and two more technical assistance modules are available on topics related to desegregation and equity. (VM)

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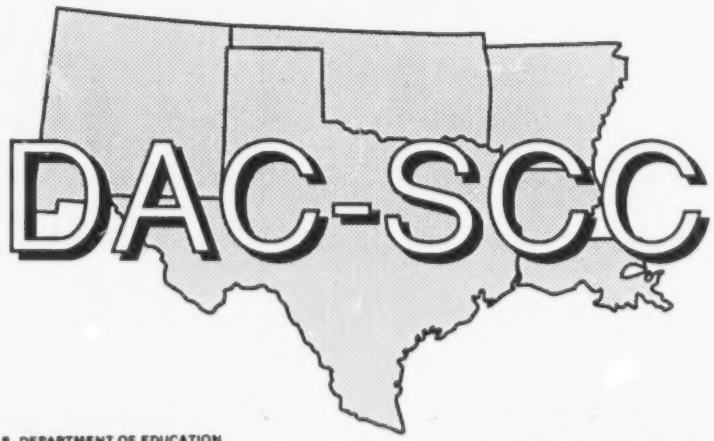
Federal Statutes & Directives Regarding National Origin Students



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Technical Assistance Module: National Origin Desegregation

Federal Statutes and Directives Regarding National Origin Students

Developed by
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1988

FOREWORD

The Desegregation Assistance Center - South Central Collaborative of Region VI, located in San Antonio, Texas, serves the educational equity needs of school personnel, parents and students in a five-state area: Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

The technical assistance and training that our center provides focuses on the issues and problems related to race desegregation, gender equity and national origin desegregation. This task is great, the needs are diverse, and the geographic area is extensive. Thus, we are pleased to have developed twelve technical assistance and training modules (four in each equity area) that are intended to build the capacity of school personnel to address their own needs.

We wish to acknowledge the excellent collaboration and contributions of our satellite center at the University of New Mexico-Albuquerque, in the development of these modules.

Each module is complete with objectives, pre/post-tests, activities to help participants meet each objective, readings, handouts, and transparency masters. The modules have undergone a rigorous review process by experts in each state in our service area. Their comments and contributions have been carefully incorporated into the final modules. The modules are:

Technical Assistance Modules

Federal Statutes and Directives Regarding National Origin Students

Federal Statutes and Directives Regarding Title IX Compliance

Civil Rights Compliance: An Update

Training Modules

I First and Second Language Acquisition Processes

II Integrating the ESL Student into the Content Area Classroom

III Recognizing Cultural Differences in the Classroom

IV Sex Stereotyping and Bias: Their Origin and Effects

V Modeling Equitable Behavior in the Classroom

VI Avoiding Sex Bias in Counseling

VII Equity in Counseling and Advising Students: Keeping Options Open

VIII Interpersonal Communications: A Human Relations Practicum

IX It's a Matter of Race: Race Relations in the Desegregated Setting

We have attempted to bring you the most up-to-date information in these modules. They are available individually ($7.50 each) or as an entire series ($75.00). A "Trainer of Trainers" session can also be arranged to enhance the capacity of your own personnel to use these modules effectively.

Breaking down the barriers to equal educational opportunity is a critical step towards educational excellence, equity and empowerment for all students. We hope these modules will expedite that effort.

Gloria Zamora, Ph.D.
Director, DAC-SCC

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Federal Statutes and Directives Regarding National Origin Students

Summary: This module will familiarize participants with the legal aspects of providing services to limited English proficient (LEP) students.

Length of session: 3 hours

Objectives:

1. Participant will become familiar with the services available through Title IV for national origin minority populations.
2. Participants will become familiar with the federal legal requirements concerning LEP students.
3. Participants will become familiar with procedures necessary to insure the rights of LEP students.
4. Participants will develop recommendations for meeting the needs of LEP students enrolled in the local education agency (LEA) by applying the information learned in this training session.

Overview of Session:

Time	Objective	Activity	Materials
20 minutes		Warm-up	Lemon
10 minutes	Objective 1	Discussion	Transparencies (1-2)
5 minutes		Pre-test (optional)	Pre-test
40 minutes	Objective 2	Lecturette	Transparencies (3-12)
15 minutes		Break	
30 minutes	Objective 3	Lecturette	Transparencies (13-17)
40 minutes	Objective 4	Large/small group discussion	Handout 1 Task Sheet 1
10 minutes		Post-test (optional)	Post-test
5 minutes		Closure	Lemon
5 minutes		Evaluation	

Background reading for the presenter:

Zamora, Gloria Rodriguez. "Understanding Bilingual Education," IDRA Newsletter, November 1979.

Fradd, Sandra H., & Tikunoff, William J. Bilingual Education and Bilingual Special Education: A Guide for Administrators. College Hill Press, Little Brown & Co., 1987. Chapter 2: Legal Considerations.

Warm-up:

Time: 20 minutes

Materials:
Lemon

Focus the participants' attention by saying: "I am going to show you an object, and I want you to make a mental note of your first thought(s) when you see the object."

Take a lemon from your pocket, briefcase, etc. and hold it up before the participants and ask:

1. "What do you think of when you see this?" (Pause)

2. Before you respond, classify your first reaction.

3. "How many of you thought of something pleasant, agreeable or positive?" Allow time for show of hands.

4. "How many of you thought of something unpleasant or negative?" Allow time for show of hands.

5. "How many of you had both positive and negative feelings?" Allow time for response.

6. Explain that it is okay to react positively, negatively, or have mixed feelings toward an object or idea.

7. Ask participants to share what they thought when they saw the object. Expand their responses to include: food, beverages, aesthetic qualities, cleansing qualities, medicinal qualities, etc.

Explain to participants that:

1. Our attitudes often are limited by our past experiences;

2. We often categorize things as favorable and non-favorable because of our lack of information concerning the subject;

3. The school system often classifies the national origin minority, LEP, or culturally different students as the "lemons" in the educational system;

4. This workshop will provide information to the participants so that appropriate instructional decisions will be made concerning the education of LEP students.

Objective 1: Participants will become familiar with the services available through Title IV Desegregation Assistance Centers for national origin minority populations.

Time: 10 minutes

Materials:

Transparencies:
1. Title IV Desegregation Assistance Centers
2. National Origin Desegregation

Lecturette:

(Display Transparency 1)

Desegregation Assistance Centers are funded under Title IV of the Civil Rights Act of 1964. Currently, there are ten Desegregation Assistance Centers throughout the United States. DACs serve a designated service area within the fifty states and trust territories. (Identify your region and the territory served by your DAC. The following list of DAC regions, states served, and directors may be used as reference.)

Region	States Served	Director and Address
A	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Raymond Rose The NETWORK 290 South Maine St. Andover, Massachusetts 01810
B	New Jersey, New York, Puerto Rico, Virgin Islands	LaMar Miller New York University School of Education Health, Nursing & Arts Professions Metro Center 32 Washington Square New York, New York 10003
C	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	Sheryl Denbo The American University 4400 Massachusetts Ave., N.W. Washington, D.C. 20016
D	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	Gordon Foster University of Miami P.O. Box 248065 Coral Gables, Florida 33124

Region	States Served	Director and Address
E	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	Percy Bates Programs for Educational Opportunity The University of Michigan 1033 School of Education Building Ann Arbor, Michigan 48109-1259
F	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	Gloria Zamora Intercultural Development Research Association 5835 Callaghan Rd.,Suite 350 San Antonio, Texas 78228
G	Iowa, Kansas, Missouri, Nebraska	Shirley McCune Mid-continent Regional Educational Laboratory Equity Division 4709 Belleview Kansas City, Missouri 64112
H	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	Dianne Siegfreid Weber State College Mountain West Educational Equity Center 3750 Harrison Boulevard Ogden, Utah 84408
I	Arizona, California, Nevada	Harriet Doss Willis Southwest Regional Laboratory for Education Research & Development 4665 Lampson Avenue Los Alamitos, California 90720
J	Alaska, Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, Northern Mariana Islands, Trust Territory of the Pacific	Ethel Simon-McWilliams Northwest Regional Educational Laboratory 101 S.W. Main Street, Ste. 500 Portland, Oregon 97204

(Display Transparency 2)

Desegregation Assistance Centers are designed to provide information, technical assistance, and training to any eligible requesting local education agency (LEA) in three equity areas. One of these areas is national origin desegregation.

National Origin Desegregation

"National origin desegregation" means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for participation in all educational programs.

Information is available on relevant research, theory, and materials that assist LEAs in meeting the language-related needs of national origin minority (NOM) and limited English proficiency (LEP) students. Training programs are provided to LEA personnel, parents, and community members in: understanding state and federal regulations, developing education plans, and providing instruction to NOM/LEP students, thus enabling them to deal effectively with special problems occasioned by national origin desegregation.

Pre-test (optional)

Time: 5 minutes

Materials:

Pre/Post -test

Administer the pre-test to the participants. Provide the correct responses from the answer key below.

Answer Key

1. D - LEAs are required to serve LEP students under the Civil Rights Act of 1964.

2. A - All four skills: understanding, speaking, reading, and writing English must be taught.

3. A - Bilingual means two languages, the student's native language and English.

4. C - The ultimate goal of special language programs is to mainstream the student into the regular educational program.

5. E - All of the above address a student's rights.

6. C - ESL must be provided. Additional language instruction may be provided on a local option basis.

Pre/Post-Test

Name:_____ Date: _____

Indicate the correct answer by circling the appropriate letters.

1. An LEA is not required to serve LEP students if:
   A. it does not receive federal funds.
   B. there are few students who speak a language other than English.
   C. there are no state law requirements for LEP students.
   D. none of the above.

2. An LEA is held responsible for a LEP student's:
   A. understanding, speaking, reading, and writing English.
   B. understanding, speaking, and reading English.
   C. understanding and speaking English.
   D. understanding English.

3. A bilingual education program requires the LEA to provide:
   A. instruction in the student's native language and in English as a second language.
   B. instruction in English as a second language.
   C. instruction in the student's native language.
   D. instruction in an alternative English program.

4. An LEA is not required to provide services to a LEP student after:
   A. the student has been properly identified.
   B. appropriate instruction has been provided to the student.
   C. the student's success is monitored and he/she can compete on an equal footing with English-speaking peers.
   D. the student has been in a bilingual program for three years.

5. The right to receive appropriate instruction is guaranteed by:
   A. the U.S. Constitution.
   B. the Civil Rights Act of 1964.
   C. the May 25, 1970 Memorandum.
   D. the Lau v. Nichols decision of 1974.
   E. all of the above.

6. An LEA with LEP students from four different language groups in third grade must provide one of the following approaches:
   A. bilingual education in the child's home language.
   B. special education instruction for all non-speakers of English.
   C. English-as-a-second-language instruction.
   D. mainstreamed classes with no special instruction provided.

Objective 2: Participants will become familiar with the federal legal requirements concerning LEP students.

Time: 40 minutes

Materials:

Transparencies:

3. United States Constitution, Amendment 14 (1868)
4. Brown v. Board of Education (1954)
5. Brown v. Board of Education (1954)
6. Title VI of the Civil Rights Act of 1964
7. Civil Rights Act (1964)
8. May 25, 1970 Memorandum
9. D/HEW Memorandum of May 25, 1970
10. Lau v. Nichols (1974)
11. Lau v. Nichols (1974)
12. Justice Douglas, Lau v. Nichols (1974)

Lecturette:

(Display Transparency 3)

Colonial Period to 1840

During the period of colonization of what is now the United States and continuing throughout the first half-century of this nation's independent existence, non-English or bilingual schooling was frequently the rule rather than the exception. The various non-English-speaking immigrant groups who settled in the East and Midwest often established their own schools, which usually were affiliated with the religious denomination to which a particular group belonged. In the parts of the United States originally colonized by Spain, the first schools were founded by the Spanish missionaries. Those schools that were established for the Indians were often bilingual. During the 1700s schools in Pennsylvania, Maryland, Virginia, and the Carolinas used the native tongue exclusively as the medium of instruction and taught English as an academic subject. After independence, English came to assume a greater importance.

1840 to World War I

This period witnessed the growth of public school education in the United States. Private and parochial non-English or bilingual schools lost some ground to the public schools. The early public bilingual programs had mixed success. A major problem was the lack of widespread public support for these programs.

World War I to 1950

This period was characterized by the almost complete abandonment of bilingual education in the United States and a declining interest in the study of foreign languages. The reasons for this were several: (1) the advent of mandatory attendance laws for public schools, (2) the elimination of public funding for church-affiliated schools, and (3) the isolationism and nationalism which pervaded American society after World War I. These factors led to the implementation of English-only instructional policies in many states. By 1923, thirty-four states had passed laws that forbade the use of other languages for instruction in all subject areas except foreign language classes.

1950 After World War II the climate of public opinion slowly began to change. This led to a renewed interest in the study of foreign languages which began to manifest itself in the 1950s and to the resurgence of bilingual education in the 1960s.

Listed below in chronological order are the major documents that regulate the use of federal and state funds which affect the education of limited English proficient (LEP) students.

(Display Transparency 4)

1954 Brown v. Board of Education of Topeka
The Supreme Court ruled that compulsory segregation of races in public schools was unconstitutional. The court held that separate facilities for black and white students were "inherently unequal," and in 1955 ordered states with segregated schools to open them to all races.

(Display Transparency 5)
(Display Transparency 6)

1964 Civil Rights Act (P.L. 88-352)
Title VI - Nondiscrimination in federally assisted programs, Sec. 601. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(Display Transparency 7)

1965 Elementary and Secondary Education Act (P.L. 89-10)
Title I -- Financial assistance to local educational agencies for the education of children from low-income families.

Sec. 101. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress declared it to be the policy of the United States to provide financial assistance. . . to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means. . . which contribute particularly to meeting the special educational needs of educationally deprived children.

1968 Elementary and Secondary Education Act, 1965 (as amended) (P.L. 92-83)
Title VII -- Bilingual Education Programs

Sec. 702. The Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, and (B) to provide financial assistance to local educational agencies, and to state education agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs in elementary and secondary schools, including activities at the preschool level which are designed to meet the educational needs of such children; and (c) to demonstrate effective ways of providing for children of limited English speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language.

(Display Transparency 8)

1970 May 25, 1970 Memorandum, Dept. of HEW, 35 Fed. Reg. 11595 (Sent to school districts with more than 5 percent national minority children)

Compliance reviews by the Office for Civil Rights (OCR) revealed a number of practices that denied equality of educational opportunity to linguistic minority students. The May 25 Memorandum clarified the application of Title VI to national origin minority students:

> "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."

Further, the memo states:

> "Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track."

Although the memo requires districts to take "affirmative steps" (not defined), it does not suggest that such steps require the expenditure of additional funds.

The memo places equal emphasis on (1) placing students in appropriate programs and (2) removing students from these programs once their linguistic needs are met.

(Display Transparency 9)

1972 Emergency School Aid Act (P.L. 92-318)

Sec. 702. (A) The Congress found that the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which local education agencies do not have access. (B) The purpose of this title was to provide financial assistance---
(1)To meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;
(2)To encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students;
(3)To aid school children in overcoming the educational disadvantages of minority group isolation.

(Display Transparency 10)

1974 Lau v. Nichols (Supreme Court Decision)

In this decision, the Supreme Court of the United States found that failure to provide supplemental English language instruction to students who do not speak English "denies them a meaningful opportunity to participate in the public educational program and violates Section 601 of the Civil Rights Act of 1964."

This decision was based on Title VI and rested upon the requirements of the May 25 Memorandum.

(Display Transparency 11)

1975 Education for All Handicapped Children Act (P.L. 94-142)

This legislation was passed to assure that "all handicapped children have available to them, within the time periods specified in Section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children; and to assess and assure the effectiveness of efforts to educate handicapped children.

(Display Transparency 12)

Source:

Keller, Gary D. & Van Hooft, Karen S. Bilingualism and Bilingual Education in the U.S. Department of Foreign Languages. Jamaica, New York: York College, CUNY.

Allow time for discussion/questions.

Break

Time: 15 minutes

Objective 3: Participants will become familiar with procedures necessary to insure the rights of LEP students.

Time: 30 minutes

Materials:

Transparencies:

13. States with Legislation Concerning LEP Students
14. Identification of LEP Students in Texas
15. Assessment of Instructional Needs of LEP Students in Texas
16. Required Programs for LEP Students in Texas
17. Components of a Bilingual Education Program in Texas

Lecturette:

Federal and state legislation and litigation, as well as administrative policy decisions, have clearly established the rights of children to bilingual education programs. Legal and educational experts, in agreement with linguistic minority advocates, have repeatedly stressed that a meaningful education can be attained only in the language understood by students. Teaching children of limited English proficiency solely in English without consideration for their native language skills constitutes a denial of these children's equal educational opportunities.

(Display Transparency 13)

Today twenty states have enacted bilingual education laws. Most bilingual education programs mandated are transitional in nature, although some states, such as Alaska, California, Connecticut, and New Mexico, allow for language maintenance programs. Most state mandates require school districts to conduct an annual census to determine the number of language minority children in the district and to notify parents of their children's placement in bilingual programs. Another common feature is the requirement that language minority children be integrated with English-speaking children in courses which do not require English language proficiency (such as art, music, and physical education). The laws differ in important areas, though. Massachusetts and Illinois, for example, require that only reading and writing in the native language be taught, while oral comprehension, speaking, reading, and writing are taught for English. Texas law states that all four skill areas will be developed in both the native language and English.

Source:

Ambert, Alba N., & Melendez, Sarah E. Bilingual Education: A Sourcebook. Teachers College Press, 1987.

Both the linguistic and academic levels of the language minority student must be considered in determining instructional needs. Each state may use different processes.

The following process is required by the Texas Education Agency pursuant to Senate Bill 477 of 1974. The major steps essential to appropriate placement are outlined below.

(Display Transparency 14)

Identification of LEP Students

Step 1 Screen all students with a home language survey to determine:

(1) the language normally used in the home; and
(2) the language normally used by the student.

Step 2 Test those students having a home language other than English with a state-approved oral language proficiency test to determine proficiency in English.

Step 3 Test those students in grades 2-12 having a home language other than English with a state-approved standardized achievement test. The reading and language arts scores on the previous year's achievement test may be used if the student is not enrolled during the district's regular testing period.

Step 4 Classify each student as LEP or non-LEP.

(Display Transparency 15)

Assessment of Instructional Needs

Step 5 Administer an oral language proficiency test in the primary language to limited English proficient students placed in bilingual education programs.

Step 6 Review information about the students' academic history, special needs, and previous instruction. (This action is the responsibility of the Language Proficiency Assessment Committee LPAC, as required by S.B. 477.)

Step 7 Use information in Guidelines for Language Usage in Bilingual Education and English as a Second Language Programs (TEA, 1987) to determine the time and treatment required for each student upon initial placement.

Step 8 Provide appropriate instruction for mastery of the essential elements* of the required subjects. Beginning at prekindergarten and going through grade 12, every effort must be made to provide a sequential program of bilingual education or ESL instruction as required.

*The essential elements are the educational outcomes required in Texas by House Bill 72. Other states may use different terminology.

By using these steps, students should be classified as LEP or non-LEP and placed in a language category based on oral and written language skills demonstrated upon initial entry into bilingual education or ESL programs.

(Display Transparency 16)

The total amount of time needed for bilingual education or ESL instruction will vary for each student; however, students of similar language skills and grade levels may be grouped for instruction. It is expected that students will gain language skills as they progress through the program. Time and treatment allocations have taken this progression into consideration and the student in a bilingual education program need not be recategorized during the year. Rather, students should work through an appropriate progression for the mastery of the essential elements until they meet the criteria for reclassification as non-LEP.

Required Programs for LEP Students in Texas

Bilingual education is defined by Texas statute as "...a full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students..." and provides for carefully structured and sequenced mastery of English language skills. Texas Board of Education rule requires that all bilingual education programs contain the six components that are listed below. Commonly accepted principles of quality education underlie each of the six components and form the crosswalk to the essential elements found in the Texas statewide curriculum. These principles are listed after each component.

(Display Transparency 17)

Basic concepts starting the student in the school environment shall be taught in the student's primary language.

- Orientation to the school setting in the student's primary language provides comprehensible communication for adjustment into the learning environment.

- Successful initial communication contributes to the social adjustment of the student.

. Introduction to the school environment through the primary language allows natural language acquisition to continue without interruption.

Basic skills of comprehending, speaking, reading, and writing shall be developed in the student's primary language. This component shall provide for a carefully structured and sequenced mastery of the essential elements in language arts in the primary language.

. Children bring a rich array of natural language from their homes. The school then must develop each child's primary language, progressing from the concrete to the abstract or formal levels of language, to increase its use in school.

. Although informal language is useful for social purposes, attainment of the formal levels is required for mastering essential elements for language arts and other required subjects.

. The development of the ability to think about and reflect upon the nature and functions of language, as children develop cognitively, is achieved more quickly in the student's primary language than in the student's second language.

Basic skills of comprehending, speaking, reading, and writing shall be developed in the English language using English-as-a-second-language methods. This component shall provide for a carefully structured and sequenced mastery of the essential elements in language arts in the English language.

. Acquisition of the second language is significantly dependent upon mastery of the first language.

. Instruction of English language concepts should be appropriate to the student's linguistic and academic developmental stage.

. Comprehensible linguistic input in the second language is required for concept development.

Subject matter and concepts shall be taught in the student's primary language. This component shall provide for mastery of the essential elements for mathematics, science, and social studies.

. Development of language and content area concepts are interdependent.

. The development of higher order thinking skills is dependent upon effective participation in the content area subjects.

. Time lost from subject matter development for children in the primary grades can never be regained; therefore, immediate participation in math, science, and social studies is imperative.

Subject matter and concepts shall be taught in the English language using English-as-a-second-language methods. This component shall provide for mastery of the essential elements established for mathematics, science, and social studies in the primary language.

. Language is learned best when it has a purpose and function. Using subject matter to learn language provides both.

. Attainment of mastery for some mathematics, science, and social studies essential elements is not always dependent on reading skills.

Attention shall be given to instilling in the student confidence, self-assurance, and a positive identity with his or her cultural heritage. This component shall be an integral part of the total curriculum and not a separate subject. It shall address the history and cultural heritage of the student's primary language and the history and culture of the United States.

. School must help bridge the child's home culture and background to the society in which the child will participate as an adult. This adjustment should be accomplished without alienating the child or the child's family. It is an effort to offer the child the best of two worlds.

Source:

Texas Education Agency. Guidelines for Language Usage in Bilingual Education and English as a Second Language Programs. Austin, Texas: TEA, 1986.

Objective 4: Participants will develop recommendations for meeting the needs of LEP students enrolled in the local education agency (LEA) by applying the information learned in this training session.

Time: 40 minutes

Materials:

Handout :

1. Rights of Limited English Proficient Students under Federal Law - A Guide for School Administrators.

Task Sheet :

1. Recommendations

Large/small group discussion:

Distribute Handout 1 and allow participants to discuss the questions and responses. This activity may be done in a large group or in small groups. Consider dividing the participants by grade levels (elementary, middle school, high school, etc.). The needs for each group may differ.

Bring closure to this activity by asking the participants to:

1. Brainstorm ideas for meeting the needs of LEP students in their LEA. (Record all ideas on chart tablets or chalkboard.)

2. Have the group organize their ideas into the categories described by Roos as minimal for meeting the needs of LEP students. These include:

   Student Identification
   Selection of Program(s)
   Training of Personnel
   Materials and Resources
   Monitoring and Evaluation

3. Using Task Sheet 1, divide the group into five small groups. Let each group choose one of the categories listed in Activity 2 and complete the task as specified. Allow 10 minutes for group work.

4. Convene the total group. Allow each small group to report. Collect the recommendations and seek appropriate approval to implement them.

Post-test

Time: 10 minutes (optional)

Administer post-test . Allow participants to clarify any misconceptions they might have concerning LEP students.

Closure:

Time: 5 minutes

Use the lemon to bring closure. Point out that:

1. A lemon is of little use until it is cut, wedged, squeezed, grated, etc. We must change its form in order for it to be useful.

   Draw an analogy:

   LEP students have the same capacity and desire to learn as other students. Our responsibility as educators is to make learning accessible to LEP students by changing our instructional approach.

2. A lemon contains seeds capable of producing an identical fruit, given sufficient time.

   Draw an analogy:

   Human beings replicate themselves. Persons with limited educational opportunities usually have children who have the same values that they do. Our responsibility as educators is to break the cycle of low educational attainment, poverty, dropouts, etc.

3. The first impression you have when you see a lemon is limited by your past experience. A lemon can be used for numerous purposes.

   Draw an analogy:

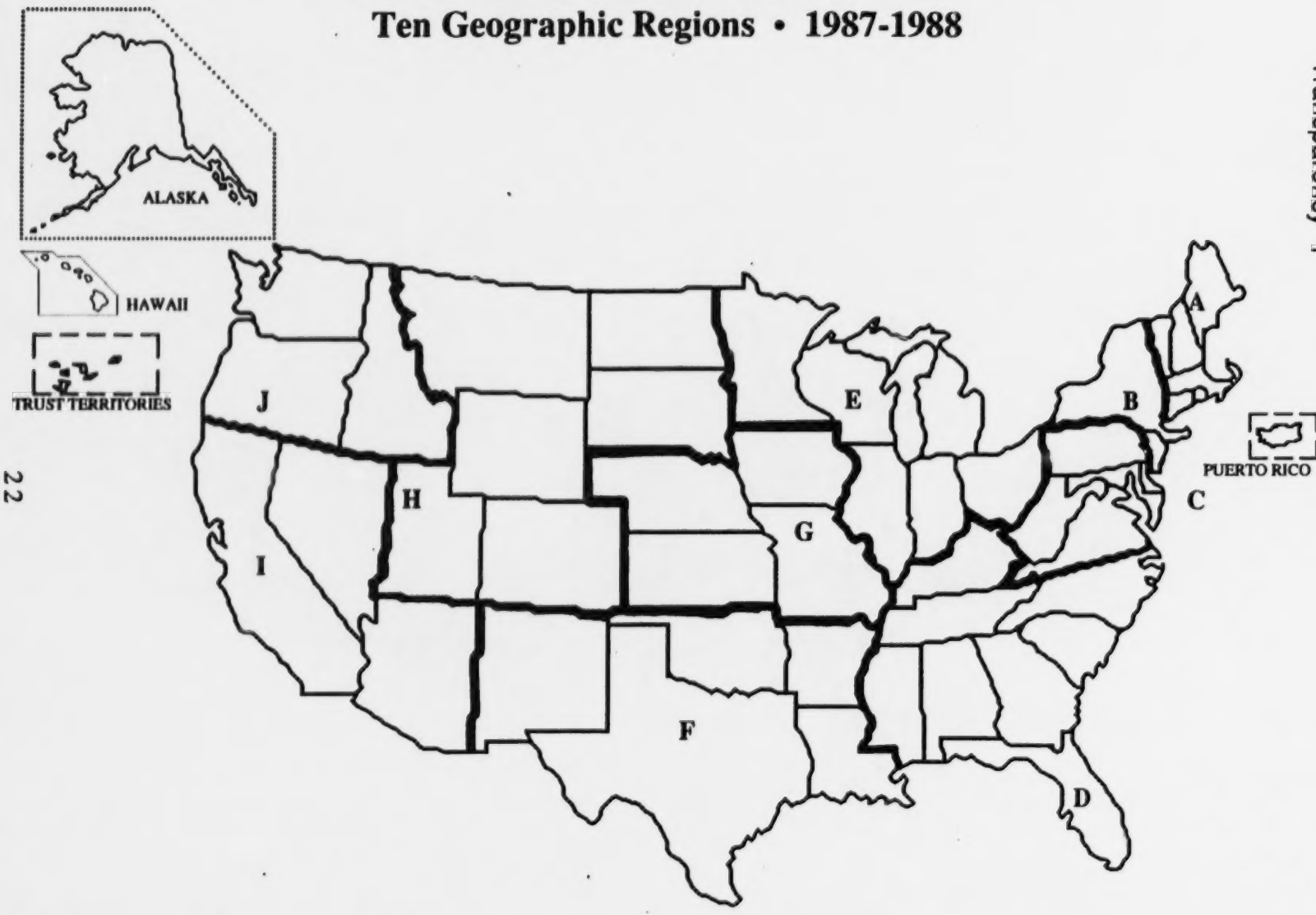
   LEP students have tremendous potential. Our responsibility as educators is to unleash that potential by providing appropriate instruction for all students regardless of language, culture, ethnicity, etc.

Evaluation:

Time: 5 minutes

Distribute the evaluation forms and have the participants complete them.

Title IV Desegregation Assistance Centers
Ten Geographic Regions • 1987-1988



National Origin
Desegregation Assistance

"National origin desegregation" means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for all participation in all educational programs.

United States Constitution

Amendment 14 (1868):

1) Protects the privileges and immunities of all citizens.

2) Provides equal protection under the law.

3) Gives Congress power to enforce by legislation.

Brown v. Board of Education (1954)

established the first reference to education as a "...right which must be made available to all on equal terms."

This is in keeping with the 14th Amendment which guarantees every citizen the full range of rights of citizenship.

Technical Assistance: NOD
Transparency 5

Brown v. Board of Education (1954)

1) **Struck down the separate but equal doctrine.**

2) **Declared separation of Black and White students unconstitutional.**

3) **Ordered desegregation of schools with "deliberate speed."**

Title VI of the Civil Rights Act of 1964

provided that "... no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance."

Civil Rights Act (1964)

1) Forbade discrimination on account of race, color, age, creed, or national origin in any federally funded activity.

2) Authorized D/HEW to apply compliance procedures and reviews and to withhold funds.

3) Authorized the Department of Justice to sue in federal court to secure the desegregation of public facilities.

4) Authorized the U.S. Office of Education to provide financial assistance.

MAY 25, 1970 MEMORANDUM

"WHERE INABILITY TO SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE EXCLUDES NATIONAL ORIGIN MINORITY GROUP CHILDREN FROM EFFECTIVE PARTICIPATION IN THE EDUCATIONAL PROGRAM OFFERED BY A SCHOOL DISTRICT, THE DISTRICT MUST TAKE AFFIRMATIVE STEPS TO RECTIFY THE LANGUAGE DEFICIENCY IN ORDER TO OPEN ITS INSTRUCTIONAL PROGRAM TO THESE STUDENTS."

D/HEW Memorandum of May 25, 1970:

1) **Affirmed the application of the Civil Rights Act of 1964 to language minority children.**

2) **Identified three main areas of concern:**

   a) **unequal access to participation in school programs because of language;**

   b) **segregation by tracking, ability grouping and assignment to special education programs;**

   c) **exclusion of parents from school information.**

3) **Instructed the Office for Civil Rights to implement, review, and enforce compliance procedures.**

Lau v Nichols (1974)

"UNDER THESE STATE-IMPOSED STANDARDS THERE IS NO EQUALITY OF TREATMENT MERELY BY PROVIDING THE SAME FACILITIES, TEXTBOOKS, TEACHERS, AND CURRICULUM FOR STUDENTS WHO DO NOT UNDERSTAND ENGLISH EFFECTIVELY."

Lau v. Nichols (1974):

1) **Found a denial of equal educational opportunity under the Civil Rights Act of 1964.**

2) **Affirmed the authority of D/HEW to enforce the Civil Rights Act of 1964 (equal educational opportunity).**

3) **Affirmed the validity of the May 25th Memorandum extending the Civil Rights Act of 1964 to language minority children.**

4) **Affirmed the authority of D/HEW "to require affirmative remedial efforts to give special attention to linguistically deprived children." (Lau Remedies)**

"BASIC ENGLISH SKILLS ARE AT THE VERY CORE OF WHAT THE PUBLIC SCHOOLS TEACH. IMPOSITION OF A REQUIREMENT THAT, BEFORE A CHILD CAN EFFECTIVELY PARTICIPATE IN THE EDUCATIONAL PROGRAM, HE MUST ALREADY HAVE ACQUIRED THOSE BASIC SKILLS IS TO MAKE A MOCKERY OF PUBLIC EDUCATION. WE KNOW THAT THOSE WHO DO NOT UNDERSTAND ENGLISH ARE CERTAIN TO FIND THEIR CLASSROOM EXPERIENCE TOTALLY INCOMPREHENSIBLE AND IN NO WAY MEANINGFUL."

JUSTICE DOUGLAS
DECISION IN LAU V. NICHOLS (1974)

States with Legislation Concerning LEP Students

State	Date Passed	Type of Program
Alaska	1975	Maintenance/Transitional
Arizona	May 1973	Transitional
California	September 1976	Maintenance/Transitional
Colorado	November 1975	Transitional
Connecticut	July 1977	Maintenance/Transitional
Illinois	1973	Transitional
Indiana	1976	Transitional
Louisiana	July 1975	Transitional
Maine	March 1977	Transitional
Massachusetts	November 1971	Transitional
Michigan	October 1974	Transitional
Minnesota	May 1977	Transitional
New Jersey	January 1975	Transitional
New Mexico	April 1973	Maintenance/Transitional
New York	May 1974	Transitional
Oregon	1971	Transitional
Rhode Island	May 1974	Transitional
Texas	June 1973	Transitional
Utah	February 1977	Not Stated
Wisconsin	1975	Transitional

Ambert & Melendez, Bilingual Education: A Sourcebook, 1987.

Identification of LEP Students in Texas

Step 1 **Screen all students with a home language survey to determine:**

(1) the language normally used in the home; and

(2) the language normally used by the student.

Step 2 **Test these students having a home language other than English with a state-approved oral language proficiency test to determine proficiency in English.**

Step 3 **Test those students in grades 2-12 having a home language other than English with a state approved standardized achievement test. The reading and language arts scores on the previous year's achievement test may be used if the student is not enrolled during the district's regular testing period.**

Step 4 **Classify each student as LEP or non-LEP.**

Assessment of Instructional Needs of LEP Students in Texas

Step 5 Administer an oral language proficiency test in the primary language to limited English proficient students placed in bilingual education programs.

Step 6 Review information about the students' academic history, special needs, and previous instruction. (This action is the responsibility of the LPAC as required by SB 477.)

Step 7 Use information in sections IV-VIII of Guidelines for Language Usage in Bilingual Education and English as a Second Language Programs (TEA, 1987) to determine the time and treatment required for each student upon initial placement.

Step 8 Provide appropriate instruction for mastery of the essential elements* of the required subjects. Beginning at prekindergarten through grade 12, every effort must be made to provide a sequential program of bilingual education or ESL instruction as required.

* The essential elements are the educational outcomes required in Texas by H.B. 72. Other states may use different terminology.

Texas Education Agency, Guidelines for Language Usagein Bilingual Education and English as a Second Language Programs, 1986.

Technical Assistance Module: NOD
Transparency 16

Required Programs for LEP Students in Texas

Types of Programs	Grades PreK through Elementary	Grades 7 through 12
District identifying 20 or more LEP students in any language classification of the same grade level	Bilingual Education	ESL *
District identifying fewer than 20 LEP students in any language classification of the same grade level	ESL	ESL

* School districts may provide bilingual education instruction above grade 5 on a local option basis.

Texas Education Agency, Guidelines for Language Usage in Bilingual Education and English as a Second Language Programs, 1986.

COMPONENTS OF BILINGUAL EDUCATION PROGRAMS IN TEXAS

1. THE BASIC CONCEPTS STARTING CHILDREN IN THE SCHOOL ENVIRONMENT ARE TAUGHT IN THE NATIVE LANGUAGE THAT THEY BRING FROM HOME.

2. LANGUAGE DEVELOPMENT IS PROVIDED IN THE CHILD'S FIRST LANGUAGE.

3. LANGUAGE DEVELOPMENT IS PROVIDED IN THE CHILD'S SECOND LANGUAGE.

4. SUBJECT MATTER & CONCEPTS ARE TAUGHT IN THE FIRST LANGUAGE.

5. SUBJECT MATTER & CONCEPTS ARE ALSO TAUGHT IN THE SECOND LANGUAGE OF THE CHILD.

6. SPECIFIC ATTENTION IS GIVEN TO INSTILLING IN THE CHILD A POSITIVE IDENTITY WITH HIS OR HER CULTURAL HERITAGE, SELF-ASSURANCE, AND CONFIDENCE.

Texas Education Agency, State Plan for Bilingual Education, 1978.

Technical Assistance Module: NOD
Handout 1

RIGHTS OF LIMITED ENGLISH PROFICIENT STUDENTS UNDER FEDERAL LAW -- A GUIDE FOR SCHOOL ADMINISTRATORS

BY: PETER D. ROOS, ESQ.

As any school administrator knows, the past decade has seen a virtual deluge of court opinions, federal laws, federal regulations and policies, state laws, state regulations and interpretations of all of these concerning the rights of Limited English Proficient students. It is the thesis of this short guide that there are a number of common themes that run through these authorities which provide fairly sure guidance for the conscientious administrator. These are set forth through a question and answer format. Several notes of caution are however advisable. First, the federal authorities relied upon provide a minimum necessary for legal compliance. State laws may be more specific or more protective than the federal precedents discussed; where this is the case, their terms must be followed. Secondly, laws change as do legal precedents. While this guide seeks to identify recurring themes upon which reliance can be placed, nothing is immutable. Thus, it is always worthwhile to make a final check to assure complete compliance with the law.

QUESTION:
Is there a legally acceptable, commonly practiced procedure for identifying Limited English Proficient (L.E.P.) pupils?

ANSWER:
Yes. The legal obligation is to identify all students who have problems speaking, understanding, reading or writing English due to a home language background other than English. In order to do this, a two-phase approach is common and acceptable. First, the parents are asked, through a Home Language Survey or on a registration form, whether a language other than English is utilized in the child's home. If the answer is affirmative, then the second phase is triggered. In the second phase, those students identified through the Home Language Survey are given an oral language proficiency test and an assessment of their reading and writing skills. There are a half dozen or so acceptable oral proficiency tests especially designed for this purpose; at present, most Districts use a percentile score on the reading and language subparts of the C.T.B.S. or a similar standardized test to measure those skills. Legally a District should be safe from a charge that it failed to identify L.E.P. students if it treats all students who score below the 36th percentile as L.E.P. and thus, entitled to services.*

*Percentile score may vary according to individual states.

QUESTION:
Obviously a student identified as Limited English Proficient must be provided special English help. Are there any minimal standards for this?

ANSWER:
Yes. First, a number of courts have recognized that special training is necessary to equip a teacher to provide meaningful assistance to Limited English Proficient students. The teacher (and it is clear that it must be a teacher -- not an aide) must have training in second language acquisition techniques to teach English as a Second Language (E.S.L.). It is preferable, but probably not required, that the E.S.L. teacher have language skills sufficient to communicate with her students.

Secondly, the time spent on assisting the student must be sufficient to assure that he acquires English skills quickly enough to assure that his disadvantage in the English language classroom not harden into a permanent educational disadvantage. For the student with an oral language limitation, this may mean a minimum of two periods a day of intensive small group instruction. For the student able to speak and understand English, but with difficulty writing it, it may be sufficient to offer one period a day.

QUESTION:
Must I provide students with Bilingual instruction?

ANSWER:
At the present time, the federal obligation has not been construed to affirmatively compel a Bilingual program. As a practical matter, however, the federal mandate is such that a District would be well advised to offer a Bilingual program whenever it is possible. I will explain.

The federal mandate is not fully satisfied by an E.S.L. program. The mandate requires English language help plus programs to assure that the student not be substantively handicapped by any delay in learning English. To do this requires either a Bilingual program which keeps the student up in his course work while learning English or a specially designed compensatory program to address the educational loss suffered by any delay in providing understandable substantive instruction. To do the latter in addition to making the considerable expenditure to hire E.S.L. teachers is a vastly more expensive and complicated procedure than the provision of bilingual instruction. It is also more problematic educationally. Thus, the legally and educationally safe posture is to offer Bilingual instruction whenever it can be done.

QUESTION:
What minimal standards must be met if a Bilingual program is to be offered?

ANSWER:
The heart of a basic Bilingual program is a teacher who can speak the language of the student as well as address the students' Limited English Proficiency. Thus, a District offering a Bilingual program must take affirmative steps to match teachers with these characteristics with Limited English Proficient students. These might include allocating teachers with language skills to Bilingual classrooms, not allowing tenure or traditional practices or procedures to interfere with such associations, and affirmative recruitment of Bilingual teachers. Additionally, it requires the District to establish a formal system to assess teachers to assure that they have the prerequisite skills. Finally, where there are insufficient teachers, there must be a system to assure that teachers with most (but not all) of the skills be in Bilingual classrooms, that those teachers be on a track to obtain the necessary skills, and that Bilingual aides be hired whenever the teacher lacks the necessary language skills.

Finally, it is legally necessary to provide the material resources necessary for both the E.S.L. and bilingual components. The program must be reasonably designed to succeed. Without adequate resources, this requirement cannot be met.

QUESTION:
Must there be standards for removal of a student from a program? What might these be?

ANSWER:
There must be definite standards. These generally mirror the standards for determining whether a student is L.E.P. in the first place. Thus, objective evidence that the student can compete with his English speaking peers without a lingering language disability is necessary.

Several common practices are unlawful. First, the establishment of an arbitrary cap on the amount of time a student can remain in a program fails to meet the requirement that all L.E.P. students be assisted. Secondly, it is common to have programs terminate at a certain grade level, e.g., 6th grade. While programs may change to accommodate different realities, it is unlawful to deny a student access to a program merely because of his grade level.

QUESTION:
Must a District develop a design to monitor the success of its program?

ANSWER:
Yes. The District is obligated to monitor the program and to make reasonable adjustments when the evidence would suggest that the program is not successful.

Monitoring is necessarily a two part process. First, it is necessary to monitor the progress of students in the program to assure (a) that they are making reasonable progress toward leaning English and (b) that the program (Bilingual or other) is providing the student with substantive instruction comparable to English proficient pupils. Secondly, any assessment of the program must include a system to monitor the progress of students after they leave the program. The primary purpose of the program is to assure that the L.E.P. students ultimately are able to compete on an equal footing with their English-speaking peers. This cannot be determined absent such a post-reclassification monitoring system.

QUESTION:
May a district deny services to a student because there are few students in the District who speak his language?

ANSWER:
No. A federal law adopted in 1974, following the Supreme Court's decision in Lau v. Nichols, makes it clear that every student is entitled to a program that is reasonably designed to overcome any handicaps occasioned by his language. Numbers may, obviously, be considered to determine how to address the student's needs. They are not a proper consideration in determining whether a program should be provided.

Leading Federal Authorities

1. Title VI, Civil Rights Act of 1964, 42 U.S.C. Sec. 200d. et seq.
2. 45 C.F.R. Part 80 (H.E.W.)
3. May 25, 1970 Memorandum (H.E.W.), 35 Federal Register 11595 (1970).
4. Lau v. Nichols, 414 U.S. 563 (1974)

*5. Equal Educational Opportunities Act of 1974, 20 U.S.C. Sec. 1703 (f).

6. Serna v. Portales, 499 F. 2d 1147 (10th Civ., 1974)
7. ASPIRA v. Board of Education, 394 F.Supp. 1161 (S.D.N.Y.; 1975)
8. Lau Guidelines, H.E.W. Memorandum (Summer, 1975)
9. Rios v. Read, 73 F.R.D. 589 (E.D.N.Y., 1977)
10. Cintron v. Brentwood Union Free School District, 77 Civ. 1310 (E.D.N.Y.), Memorandum of Decision and Order (August 22, 1977) (unpublished)

    "It is apparent that, in the event state tenure law frustrates the purpose and effectiveness of Title IV and 20 U.S.C. Sec. 1703 (f), 'the state law must yield to the regulation of Congress within the sphere of its delegated power.'

11. Cintron v. Brentwood Union Free School District, 455 F. Supp. 57 (E.D.N.Y., 1978)
12. Rios v. Read, 480 F. Supp. 14 (E.D.N.Y, 1978)

*13. Casteneda v. Pickard, 648 F2 989 (5th Cir. 1981)

*14. United States v. Texas, 680 F2 356 (5th Cir. 1982)

*15. Keyes v. School District #1, Denver 540 F. Supp. 399 (D. Colo. 1983)

*Most useful authorities.

Technical Assistance Module: NOD
Handout 2

TASK SHEET

Instructions:

1. Choose a discussion leader, a recorder, a reporter, and a time keeper.
2. Everyone must contribute to the discussion.
3. Using the topic selected by your group, list some specific recommendations for your LEA to use to address the needs of LEP students. Try to arrange these recommendations in logical sequence.
4. Work quickly! You have 10 minutes to complete this task.

RECOMMENDATIONS	RESOURCES/MATERIALS (if applicable)

Understanding Bilingual Education

Gloria Rodriguez Zamora, Ph.D.

When historians record the development of bilingual education in the United States, they will observe that at least two decades before the current educational reform movement rose to national prominence and became a top priority, bilingual education advocates were litigating and legislating for changes in the educational system that would significantly improve the lot of children with limited English language skills.

The Brown v. Board of Education Supreme Court decision (1954) established the first reference to education as a "...right which must be made available to all on equal terms." Ten years later (1964), the Civil Rights Act was passed and stated that "...no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance." On May 25, 1970, the fledgling Office for Civil Rights (OCR, D/HEW) issued a significant Memorandum which further clarified the language of Title VI by adding that, in order for national-origin minority group children to effectively participate in an educational program, the school district must "...take affirmative steps to rectify the language deficiency."

Concurrent with these significant actions, minority groups were voicing their increasing concern about the high dropout rates and low achievement levels of minority children. In January 1968, Congress passed the Bilingual Education Act, which became Title VII of the Elementary and Secondary Education Act (ESEA). Thus, Federal support for bilingual education had begun.

Throughout the evolution of bilingual education and up to the present, certain questions continue to be asked:

- What is bilingual education?
- What are the purposes of bilingual education?
- How shall schools deal with the language characteristics of students with limited English skills?

This paper will address the above questions.

What Is Bilingual Education?

Title VII ESEA defines bilingual education as "...the use of two languages, one of which is English, for purposes of instruction" (PL90-247). This is a succinct definition that leaves open to interpretation the amount of instructional time to be spent learning through each of the two languages. This decision is a critical one that cannot be made arbitrarily. Each school must examine its attitudes towards non-English languages and its beliefs about the role of the native language in learning. This information must then be weighed in light of the vast amount of information and research currently available on schooling and language minority students.

Education Options for Language Minority Students

The Courts and the Office for Civil Rights have ruled that school districts must take affirmative steps to provide special assistance to children of limited English proficiency (LEP). Over the years, a number of educational approaches have emerged. Among the most well-known are: Submersion, Immersion, ESL, and Bilingual Education.

Submersion

This approach is also known as the "sink or swim" method, for in reality, no special attempt is made to assist the LEP student to learn English or content areas. Teachers in this program need not be bilingual. The results of this approach are well-documented: high levels of underachievement, high dropout rates, negative self-concepts. Submersion programs were the usual educational treatment for LEP students prior to bilingual eduction. Unfortunately, this approach has not been entirely eradicated.

Immersion

Immersion programs were first developed for majority language children in Canada whose parents asked the school to develop programs to ensure that their children would become fluent in French, the minority language. This approach groups children linguistically; no native speakers of the second language (L2--French) are included in these programs. The language of instruction is L2, except for instruction in language arts. Swain (1978) describes early immersion programs that begin at kindergarten; late immersion programs that begin around sixth grade (students take one or two years of formal instruction in L2 before beginning subject matter instruction in L2); and partial immersion programs. Spanish language immersion programs, modeled after the Canadian program, have been successfully operated for majority (English-speaking) children in Culver City, California, for over a decade.

In recent years, immersion type programs have been implemented with Spanish-speaking children of LEP. Labeled "structured immersion," their goal is to immerse LEP children in English. Their characteristics vary -- some are staffed by bilingual teachers, some are not; some use bilingual (L1 and L2) instruction, some do not. There are no clear results on these programs, although a national longitudinal study of immersion programs is currently being undertaken with federal support.

English-as-A-Second Language (ESL)

ESL has always been a critical component of bilingual education programs (bilingual teachers receive ESL training). However, in too many instances, ESL is viewed as a separate class which LEP students attend for a prescribed period of time. In too many instances, the ESL class is a pull-out program of instruction taught by an ESL trained teacher for an hour or two per day. The rest of the day is spent with the other non-LEP students in a submersion type environment; that is, LEP students try to follow the all-English curriculum taught by teachers who have little or no ESL training, and do not attempt to give them special attention.

At its best, the ESL program is coordinated with the content, skills, and concepts being learned in the native language. The ESL teacher uses a natural language approach to second language acquisition and provides "comprehensible input" (Krashen, 1981). At worst, ESL is a boring, audio-lingual, memory-drill, grammar-based recitation of workbook material that is not tied to any meaningful content or context.

Bilingual Education

Effective bilingual education programs help LEP students to achieve high levels of English proficiency, maintain subject matter knowledge through the use of the native language, develop a positive self-concept, and complete more years of schooling.

Bilingual programs must be staffed by teachers trained in both bilingual and ESL methods. Classrooms may include non-LEP students, but LEP students should be grouped for part of the day for instruction purposes. LEP and non-LEP students should be integrated for music, art, and physical education. As LEP children's English proficiency increases, the amount of instructional time spent in the native language gradually decreases and the English instructional time increases. Great care must be taken to provide a systematic transition from a Spanish/English program to an all English program.

Transitional bilingual education (TBE) programs, the kind required by law, mandate the exiting of LEP children from these programs as soon as possible. Therefore, provision is not made in TBE for the development of full literacy in L1 (the native language). L1 is seen only as a "bridge" to English: an expendable bridge. TBE can become an ideal bilingual education program by providing for the development of literacy in two languages, English and the native language.

Additive or Subtractive Bilingualism

Most bilingual education programs in the U.S. are, by law and political compromise, transitional bilingual education programs (TBE). Bilingual education programs which do not help students maintain their native language skills are called "subtractive bilingualism" (Lambert, 1984).

> This form of bilingualism can be devastating for children because they are induced through social pressure in their school, community, and even in the home to put aside their home language and replace its use as quickly and thoroughly as possible with English, the more relevant and functional language of the school. The trouble is that, for most language minority children, the home language has been the critical linguistic system associated with the development of basic concepts from infancy on....Some observers might wonder why language minority children lag behind in learning new materials through English, why they get discouraged and drop out, or why they start to question who they are and what the value is of the language and culture their parents passed on to them in the first place. In other words, language minority youngsters in this typical situation are placed in a psycholinguistic limbo where neither the home language nor English is useful as a tool for thought and expression, a type of semilingualism, as Skutnabb-Kangas and Toukomaa (1976) put it. As we learn more about this phenomenon of linguistic and cultural subtraction, it could become a major concept in the relation of language and thought.

Most bilingual programs outside the United States are additive bilingualism programs. The goal of these programs is to help children maintain their native language and to learn (add) another one. It is interesting to note that children throughout the world learn a second language in elementary school and begin studying a third language around middle school years. It is also noteworthy that the most successful bilingual programs in the United States (e.g., Culver City, California; San Diego, California; Tucson, Arizona; Milwaukee, Wisconsin) are implementing additive bilingualism programs.

Obviously, the attitudinal/philosophical bases for each of these two models differ greatly. Thus, it is clear that each school's attitude and philosophy will dictate, in large part, the type of program that will be implemented. Is the native language a "deficiency" to be overcome or is it an asset to be nurtured?

TESOL Position Statement

In 1976, the organization of Teachers of English to Speakers of Other Languages (TESOL) issued a position statement on the role of ESL in bilingual education. Given the program approaches previously described, TESOL recommends the implementation of bilingual education with an ESL component as the preferred option for instructing LEP students; their second option is a strong ESL program as part of the English monolingual instruction without an ESL component, for this type of program does not "provide equal educational opportunity to students of limited English proficiency, and it is categorically rejected as an alternative instructional model for their education" (p. 3).

Purposes of Bilingual Education

While the purposes of current bilingual education programs and policy are often misunderstood by the general public, bilingual educators as well as federal and state bilingual education mandates are quite clear about their objectives, which are:

1. to help children become fully literate in English;
2. to help children achieve academic (basic) skills;
3. to help children develop a positive self-concept; and
4. to help children stay in school longer (reduce the number of dropouts).

There is, however, a broader national purpose for bilingual education that is not addressed by the above four purposes. The broader national purpose would require maintenance of the native language. The need for this new direction for bilingual education was discussed by members of the Academy for Educational Development (AED) who, in July, 1981, with funding from the Edward W. Hazen Foundation, met with representatives of various educational agencies and organizations to discuss bilingual education policy. Specifically, the group focused on the possible relationship between bilingual education and the nation's need to overcome its alarming foreign language incompetence. The resultant memorandum stated, in part:

> ...we believe there are constructive (bilingual education) policy directions that can and should enlist the wholehearted support of education officials and the public. One such direction is

> to view bilingual education as a means of answering an increasingly recognized need in United States society - the development of greater foreign language competence in an ever-shrinking world in which international communication is not only desirable in its own right but also a prerequisite to security and economic welfare (p. 5).

In summary, the purposes of bilingual education encompass both individual student goals and national goals. The public schools of the United States must decide whether they can address all or part of these purposes.

How Shall We Deal with the Language Characteristics of Children with Limited English Proficiency?

As well-intentioned as they may be, many educators and laymen caution that teaching LEP students in their native language will retard their development of English. The recent Catholic Bishops' Pastoral, the Hispanic Presence, states that while Catholic schools should provide bilingual education opportunities,"...care must be taken to ensure that bilingual education does not impede or unduly delay entrance into the political, socioeconomic, and religious mainstream because of inability to communicate well in the prevalent language" (p. 18). Comments such as these belie a lack of understanding of the positive role the native language plays in helping children develop their potential.

The SUP and CUP Models of Bilingual Proficiency

There are those who argue that if children are deficient in English, then they need instruction in English, not in their first language (L1). This implies that proficiency in L1 is completely separate from proficiency in L2 and that content and skills learned through L1 cannot transfer to L2 and vice-versa. This theory is known as the Separate Underlying Proficiency (SUP) Model of bilingual proficiency. Any person who has learned a second language can tell you that this SUP theory is simply not true.

Cummins (1981) posits a Common Underlying Proficiency (CUP) Model "in which the literacy-related aspects of a bilingual's proficiency in L1 and L2 are seen as common or interdependent across languages" (pp. 23-24). Thus, developing cognitive and language skills in L1 is simultaneously preparing the learner to transfer these skills to L2. What is of critical importance is that in no case should the development of L1 be interrupted and supplanted by L2, for the effect will be to impede cognitive and language development in both

(Cummins, 1976; Skutnabb-Kangas and Toukomaa, 1976). "The school program should in every case attempt to build on (rather than replace) the entry characteristics of children" (Cummins, 1981, p. 42).

Empirical research tells us that bilingual education programs that utilize the native language for at least 50% of the school day are the most successful (Cummins, 1981). Rather than retarding English development, development of proficiency in L1 positively influences the development of proficiency in L2.

Dimensions of Proficiency

What is meant by language proficiency? Cummins (1980) posits that there are two dimensions of language -- a social dimension which he calls the Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP). BICS is acquired quickly, but developing CALP is a process requiring several years and is essential for academic achievement. CALP developed in any language facilitates the acquisition of other languages and the transfer of reading and writing skills from one language to another.

> Instruction through L1 is regarded as much more than an interim carrier of subject matter content; rather, it is the means through which the conceptual and communicative proficiency that underlies both L1 and English literacy (CUP) is developed (Cummins, 1981, p. 41).

Finally, the role of the native language in the development of CALP as well as the L1-L2 interdependence as described in the CUP model is well illustrated by the considerable anecdotal evidence that immigrant students who arrive in the United States after grade six (around age 11 or 12) acquire English rather quickly and often out-perform native-born Hispanic students who have been in English only United States schools since grade one. These immigrants arrive with a well-developed L1 system and with cognitive-academic skills that they soon transfer to L2.

We now return to the original question: how shall we deal with the language characteristics of children of limited English proficiency? We must make every effort to help them develop and maintain their first language, for it is the most effective way for them to learn English, develop cognitive-academic skills and develop a positive self-concept (Cardenas, 1984).

Conclusion

Bilingualism appears to be valued by most people. Foreign language education is valued and encouraged at all levels: federal and state agencies as well as individual school campuses. Yet, bilingual education for language-minority children -- a program that seeks to preserve native language and teach English -- is often looked upon with suspicion and downright disdain. Kjolseth (1983) tells us that the United States has spent millions of dollars of public funds teaching foreign languages to English monolinguals while at the same time engaging in systematic efforts to ignore and actively discourage the use and maintenance of the same languages by native speakers.

> It seems reasonable to question such actions. Why do we attempt to promote bilingualism where it is most artificial and least likely to have social reinforcement, as is the case with most foreign language training...and discourage it where it is most natural....Why have we traditionally promoted bilingualism as a long shot and thwarted it as a sure bet (p. 40)?

Kjolseth continues, saying that "there is much at stake at home and abroad....

> Internationally, our ability to deal effectively with other nations on diplomatic, political, economic, scientific, and social levels is affected by our attitudes towards other languages and by the availability of appropriately trained persons with bilingual skills (p. 40).

"This world is multilingual and it is unwise for us to remain on its fringes," Kjolseth cautions (p.48).

In a personal communication from Kenji Hakuta of Yale University, he urges the use of existing scientific data about children's bilingualism as a way to formulate bilingual education guidelines and policy. Hakuta reminds us that we are dealing with the tender psyches of developing children and that this -- not politics of bilingual education -- should be our guiding force.

In recent testimony before the House Education and Labor Committee (September 27, 1985), Hakuta formulated some specific conclusions about bilingualism which were drawn from the wealth of research data:

Some specific conclusions

(1) about the importance of a good foundation in language development for second language acquisition and for academic learning:

(a) second language acquisition is most successful when there is a strong foundation in the first language;

(b) children can become fluent in a second language without losing the first language; maintenance of the first language does not retard the development of the second language;

(2) about the relationship between language and academic learning:

(a) language is used not just for conversation and communication, but also for thinking and learning;

(b) conversational skills in a second language are learned earlier than the ability to use the language for academic learning;

(c) bilingualism in children -- in the sense of being able to use both languages in academic rather than conversational settings -- is associated with the development of the ability to think abstractly about language and to appreciate its form, as well as with the development of cognitive skills in general;

(d) academic skills learned in school transfer readily from one language to the other, so that skills taught in the native language in transitional bilingual programs do not have to be re-learned in English;

(3) about differences between people in the extent of second language acquisition:

(a) the ability to use language effectively for conversation does not imply an ability to use it well in academic tasks, nor does ability to use language in academic tasks imply good conversational skills; both skills need to be developed and evaluated;

(b) some of the differences between individuals in their ability to use language in conversations is due to attitude motivation, and other personality factors;

(c) some of the differences between individuals in their ability to use language in academic learning is attributable to their aptitude and basic intelligence;

(4) about the difference between young children, older children, and adults:

(a) older children acquire the second language more quickly because they have a stronger base in the first language;
(b) adults are as capable as are children of acquiring a second language, with the possible exception of accent;

Many schools in the United States enjoy the reputation of providing quality education for their English-speaking students. They are now in the position to harness the much-needed language resources of LEP students who speak native languages other than English, through the implementation of excellent bilingual education programs for all, thus implementing value-added education.

The abundant research data on bilingualism and second language acquisition can serve to clarify the philosophical and pedagogical basis necessary for enlightened instructional decision making.

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Bilingual Education and Bilingual Special Education

A Guide for Administrators

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Chapter 2

Legal Considerations

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Limited English proficient students, like all school-age children in the United States, are entitled to a free, appropriate education. For these students, the definition of what constitutes an appropriate eduction is not clear. Other than entitlement to a free education, the only other national policy concerning the education of students who are limited in English proficiency is that they shall be taught English. Disagreement is plentiful as to how this education shall be accomplished. The existing policy has been hammered out, little by little, through federal legislation, executive orders, and federal judicial decisions. Within this evolutionary process, the trend has been toward egalitarianism. Lawmakers and judges have continually affirmed that access to a free, appropriate education is the right of all students.

Policy and legal decisions established by state and local agencies have also influenced the policy formation at the federal level. The array of federal, state, and local regulations and court rulings attest to the fact that educational decisions for limited English proficient students are not made easily, nor are the programs that meet these students' needs easily administered. While school administrators find they must make decisions based on manifold regulations, few of these regulations specify exactly what administrators must do to provide an appropriate education for all students.

The courts have held that it is no longer sufficient just to have students with special needs physically present in regular education programs. During the past decade, court decisions have emphasized the importance of *program outcomes* for students who differ from the norm in ways that necessitate special programs. In several cases, the courts have insisted that school districts make genuine efforts to meet the learning needs of all the students within their charge. Several decisions established criteria for determining whether educational programs did actually meet the needs of limited English proficient students. When limited English proficient students are in regular educational programs, judges have been reluctant to prescribe specific programs or methods of instruction. Recent court decisions regarding students who are both handicapped and limited in English proficiency have been much more specific in outlining measures that districts must take in meeting these students' needs.

During the last half of the 1970s, executive directives emanating from the Office for Civil Rights threatened to withdraw federal funds from school districts not meeting federal standards of equal opportunity. While the threat of denying funds through civil rights enforcement has diminished, the courts remain a potential arena for addressing real and perceived educational inequities for limited English proficient students (Crawford, 1986b; Levin, 1983). The potential impact of litigation makes it imperative for administrators to be well informed about instructional strategies and decisions that remove the educational as well as physical barriers to educational equality (McFadden, 1983).

The intent of this chapter is to provide administrators with an understanding of the legal aspects involved in meeting the educational needs of limited English proficient students. Legislation in three areas: bilingual, special education, and civil rights, and three types of legal forces: legislation, litigation, and executive orders, impact on the decisions that educational administrators make for these students. Table 2-1 presents a three by three grid as a format for organizing information on significant legislation, executive rules, and litigation.

Because of the relevance of current federal legislation to practice, the most recent bilingual education legislation is examined in the first section. This information is followed by an overview of previous bilingual legislation in the United States, and provides a background for examining executive decisions and litigation. Since much of the present state and federal legislation is the result of civil rights and equal opportunity litigation, both the civil rights law and court cases that have a substantial national impact on policy are reviewed next.

The second section discusses legal issues related to the education of handicapped, limited English proficient students. Major legislative

TABLE 2-1.
Policy Regarding Limited English Proficient Students

	Bilingual	Civil Rights	Handicapped
		Legislation	
1964		Civil Rights Act	
1965	Elementary and Secondary Education Act		
1968	Bilingual Education Act		
1970			Education of the Handicapped Act
1973			Vocational Rehabilitation Act
1974	Bilingual Education Act	Equal Educational Opportunity Act	
1975			Education of All Handicapped Children Act
1978	Bilingual Education Act		
1984	Bilingual Education Act		
		Executive rules	
1970		May Memorandum	
1975		Lau Remedies	
1980	Federal Register		
		Litigation	
1923	*Meyer*		
1954		*Brown*	
1971			*P.A.R.C.*
1972			*Mills*
1973	*Aspira*		
1974	*Lau*		
1978	*Guadalupe*	*N.W. Arctic*	
	Cintron		
1980	*Doe v. Plyler*		*Frederick L.*
1981	*Keyes v. Denver*		
	U.S. v. Texas		
	Castaneda v. Pickard		
1982			*Board of Education v. Rowley*
1983			*Luke S. & Hans S.*
			Jose P.
1984			*Lora*

milestones defining the rights of the handicapped are presented first, followed by information on litigation on behalf of handicapped learners as it relates to the education of students with limited English proficiency. Specific policy and program guidelines, and implications for administrative practice, are discussed within this section. The chapter concludes with a brief overview of state bilingual and bilingual special education programs.

LEGISLATION AND LITIGATION ON BEHALF OF LIMITED ENGLISH PROFICIENT STUDENTS

Evidence of commitment to a policy of free, appropriate public education can be found in the fact that compulsory school attendance laws are widely accepted throughout the United States (Pursley, 1985). Formal agencies have supplanted families in providing the academic training necessary to participate effectively within society. It is generally believed that education prepares individuals to become self-reliant and to gain personal benefits that will last a lifetime. Cultural values as well as intellectual development are enhanced through public school attendance. The benefits acquired through free public education include: the development of social skills, increased economic opportunities, increased economic productivity, and preparation for active participation in democracy *(Wisconsin v. Foder, 1972; Board of Education, Henrick Hudson School District v. Rowley, 1982)*.

Prior to 1964, the federal government had not addressed issues related to educational opportunities of limited English proficient students. During the 1960s, ethnic minorities organized politically to address what they viewed as the inequitable distribution of social, economic, and educational opportunities. This civil rights movement attempted to rectify social, economic, and political injustices, and to change the role of the federal government in education.

A major outcome of this movement was the enactment of the Elementary and Secondary Education Act (ESEA) (P.L. 90-247). The intent of the original legislation was to increase educational opportunities for students of economically impoverished families by providing them with special remedial instruction. Through this legislation the federal government became an active participant in educating students from the lowest socioeconomic levels. Because of the concern over public reaction to federal involvement in educational matters previously considered the exclusive domain of state and local educational agencies, the ESEA legislation was written so that it would be viewed as *supplementing* rather than *supplanting* already existent state and local efforts. The intent of the ESEA legislation was to provide

auxiliary assistance to school districts with large populations of students in low socioeconomic groups. The result has been the development of resource or pull-out programs, where the basic education received by low-achieving students in regular education programs is supplemented with additional instruction in federally funded classrooms. These efforts at supplementing school districts' basic programs provided a model for both the bilingual and special education programs that developed soon after the first ESEA programs were implemented. Unfortunately, the model has proved to be of questionable benefit. As the result of being organized as supplementary services, bilingual and special education programs have not become an integral part of regular education. The resources of both fields are viewed as functioning outside the domain of regular education. By absolving regular classroom teachers from developing skills to meet the educational needs of most students, and by failing to provide regular teachers with the necessary resources and support to accomplish this goal, the implementation of supplemental or resource instruction has fragmented rather than unified the educational process.

In 1968, the ESEA legislation was expanded to include transitional bilingual education, referred to as Title VII of ESEA. Title VII was enacted to address the specific learning needs of students who had not mastered the English language. The linguistically different students, for whom the Title VII legislation was intended, were not necessarily in need of remedial instruction, but of instruction that enabled them to become proficient in English. By its inclusion as Title VII of the ESEA legislation, the remedial tenor of bilingual education legislation within the United States was established. The remedial focus of the initial federal bilingual legislation, combined with the fact that bilingualism has not been widely valued within the United States, promoted the view among many educators, as well as the general public, that limited English proficient students from low socioeconomic levels have a handicapping condition (Tikunoff and Vazquez-Faria, 1982). Not until recently has the potential contribution of bilingual education as an intellectual and linguistic opportunity for all students been seriously considered (Fradd, 1985a).

Although program policy for limited English proficient students evolved from a movement for equality in education, other social and political forces were also at work shaping second language education policy. During the period between the late 1950s and the early 1970s, the economy was in an upswing. Increased international travel and trade renewed interest in foreign language education. In addition, Soviet achievements in outer space provoked public concern for national security and provided the impetus for the National Defense Education Act of 1958 (P.L. 85-864) to promote mathematics, science,

and foreign language instruction. The strongest influence, however, was the Great Society movement, which tried to cure the problems of poverty and economic discrimination (Vega, 1983).

The most recent bilingual legislation, the 1984 Bilingual Education Act (BEA) (P.L. 98-511), is significant for several reasons. While still somewhat compensatory, the 1984 BEA states that limited English proficient students are a national linguistic resource (U.S. Department of Education, 1985). As the result of this change in perception, a variety of educational alternatives to transitional bilingual education are currently available. Consensus reached during the writing of the act suggests that, in spite of political efforts to abolish bilingual education, there is strong nationwide support for it (Baez, Fernandez, Navarro, and Rice, 1985). Since federal legislation usually sets the tone for state statutes, the 1984 BEA may be a harbinger of future changes in state and local policy (McCarthy, 1986). Since a knowledge of available funding sources is important to administrators, a review of bilingual education legislation begins with the 1984 Bilingual Education Act.

The Bilingual Education Act of 1984

The 1984 Act (Title II of P.L. 98-511) enumerates a number of concerns regarding the education of limited proficient students. These concerns are summarized here:

- A large and growing number of students are limited in English proficiency.
- Many of these students have a different cultural heritage from that of mainstream students.
- Limited English proficient students have a high dropout rate and low median years of educational attainment.
- Because of limited English proficiency, many adults are unable to participate fully in national life or effectively participate in their children's academic education.
- Segregation of many groups of limited English proficient students remains a serious problem.
- The federal government has a special and continuing obligation to assist in providing equal educational opportunities to these students and to assist them in acquiring English language skills.
- The primary means by which students learn is through the use of their native language and cultural heritage.
- Both bilingual and special alternative English instruction can provide appropriate instructional programs for limited English proficient students (U.S. Department of Education, 1985).

In order to address these concerns, funds have been allocated for six different types of instructional programs: (a) transitional bilingual education; (b) developmental bilingual education; (c) special alternative English instruction; (d) programs of academic excellence; (e) family English literacy programs; (f) special populations programs for preschool, special education, and gifted and talented students. The six types of instructional programs covered under the 1984 statute are discussed next.

Transitional Bilingual Education

Prior to 1984, all federally funded bilingual education in the United States was transitional, meaning that students' first language was used as a temporary method of communication and instruction until the students could make the transition into English. In the transitional bilingual model, first language instruction is paired with English instruction until students develop sufficient English to function successfully in regular classrooms. By definition, all transitional programs have an English language instruction component. Current legislation defines transitional bilingual education as

> a program of instruction, designed for students of limited English proficiency in elementary and secondary schools, which provides, with respect to the years of study to which such program is applicable, *structured English language instruction,* and to the *extent necessary to allow a student to achieve competence in the English language, instruction in the child's native language* [emphasis added]. Such instruction shall incorporate the cultural heritage of such students and of other students in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a student to meet grade promotion and graduation standards (U.S. Department of Education, 1985, p. D3).

The clause "to the extent necessary to allow a student to achieve competence in the English language" permits a great deal of flexibility. Since the implementation of the original bilingual legislation, the basic orientation of federal policy for minority language students has remained the same: to enable students to function proficiently in English. Clarification is frequently required because the public view of bilingual education has not always been clear on this point.

Special Alternative Instruction

According to the current statute, special alternative instruction may be necessary in school districts with diverse populations of limited English proficient students where, because of the number of dif-

ferent languages and the lack of trained first language personnel and materials, transitional bilingual programs would be difficult to implement (Stein, 1985). This alternative came about as a response to requests for more flexibility in program implementation. Although the special alternative instruction category funding has been available since 1984, little information has been disseminated on the availability of federal funds for English-only instruction (Fiske, 1985; Gersten and Woodward, 1985; Gorney, 1985; Hertling, 1985).

Developmental Bilingual Instruction

Developmental bilingual instruction is an alternative that includes both students whose first language is English and those whose first language is not English. Through academic instruction and interaction with native speakers, both groups of second language learners acquire academic and social language skills and cultural understanding of a new language, while continuing to develop similar skills in their first language. This alternative is founded on the premise that both limited English proficient students and pupils whose primary language is English can benefit from bilingual education (U.S. Department of Education, 1985). Previously, English speaking students had been allowed in transitional bilingual programs to develop an appreciation of the culture of the limited English proficient students, but not to learn a second language.

In addition to the inclusion of alternatives to transitional bilingual education, other aspects of the 1984 Bilingual Act make it unique in comparison with previous legislation. These are discussed next.

Programs of Academic Excellence

Much of the information reported in national media has focused on the failure of bilingual programs to promote academic achievement (Cardenas, 1986; Santiago, 1985). The new funding category, programs of academic excellence, is the result of a growing awareness that districts with students who are not proficient in English have limited knowledge about programs that promote academic success. The programs of the academic excellence category represent an effort to establish model programs exemplifying strategies proved to be successful in promoting the academic achievement of limited English proficient students. All types of programs—transitional, developmental, or English-only instruction—qualify for participation. In order to be considered, programs must demonstrate academic achievement through standardized test scores, reduction of the limited English proficient dropouts and retentions, and increased parental involvement (Stein, 1985).

Family English Literacy Programs

Schools frequently view the use of languages other than English as an impediment to academic progress. Often parents are requested to use English at home as a means to increase students' ability to benefit from schooling. Research indicates that the language used at home is not as important as parents' meaningful communication with their students. Parent-child interaction is essential because parents teach their students to reason, evaluate, compare, describe, plan, value, and develop thinking skills from an early age. School success is related to the amount, type, and quality of interactions students receive at home. Students who do not experience meaningful adult interactions are limited in their ability to benefit from school experiences (Bronfenbrenner, 1986; Dolson, 1985b; Wells, 1981). English family literacy programs are designed to encourage family members to assist their children's learning. The intent of such programs is to promote the mastery of English as well as the advancement of academic skills. The language of instruction for this program may be English, or a combination of first language and English (Stein, 1985).

Special Populations Programs

For the first time funds have been appropriated to develop programs that are preparatory for, or supplementary to, regular bilingual and special alternative programs. Until 1984 there were no federal funds for programs for handicapped or gifted students. The special populations programs are intended to meet the needs of preschool, handicapped, gifted and talented, and other limited English proficient students who might not participate in regular bilingual programs. In order to qualify, districts must inform parents of the nature of the program, of alternatives to program participation, and of other available options. Parents of students who do participate must be kept informed of program goals and of student attainment (Stein, 1985).

Administrative Considerations

Many school districts are faced with large numbers of students who speak a variety of different languages. Many districts do not have the resources to implement bilingual programs for all the students. Special English instruction may be the only viable choice for administrators in these circumstances. This does not necessarily mean that the students will have a program of lesser quality than students enrolled in districts with bilingual programs. An accepting attitude among administrators and teachers, the design and imple-

organization of the school to promote the value of divergence as well as high achievement can make a significant difference in the learning outcomes for all the students. School and district administrators are the ones who must make the choices, because it is they who are faced with the consequences. A brief review of previous bilingual legislation may provide administrators with a background for understanding current options.

Other Landmark Legislation

Other legislative acts have also delineated and influenced educational policy for limited English proficient students. The following is a brief review of this legislation.

Previous Bilingual Legislation

The Elementary and Secondary Act of 1965 (P.L. 90-247) became a major source of funding for educational improvement in school districts with substantial numbers of low-income families. Instructional services included programs to improve communication and vocational skills and to provide early childhood education for preschool and kindergarten students.

Under the 1968 Title VII amendment, also known as the Bilingual Education Act of 1968, programs were expanded to include limited English proficient students. These funds were targeted for schools with high concentrations of students from families with an annual income below $3,000. Schools who received Title VII funds were expected to develop transitional bilingual programs. They could use the money to purchase or develop special instructional materials and provide in-service training for teachers and other personnel working with these students. In addition to assisting pupils to learn English, programs were intended to teach about the cultural heritage of the students' first language, to establish and improve communication between the home and the school, to provide adult education programs, to assist potential dropouts, and to offer trade, vocational, and technical school training for identified students. A 15-member Advisory Committee was established to advise the President and Congress on matters relating to the needs of limited English proficient students (Leibowitz, 1980).

A major weakness of this legislation was its failure to require systematic program evaluation. After five years of funding, little was known about successful practices or program outcomes. The first evaluations of Title VII programs occurred in 1973 and focused primarily on compliance with specified federal guidelines rather than educational outcomes.

Reauthorization of the 1968 Bilingual Education Act occurred in 1974 (P.L. 93-380). Much of the 1974 reauthorization resembled the original 1968 legislation. Primarily, the 1974 Act continued to fund transitional programs in highly impacted school districts. The low-income requirement was removed; participation was open to students who needed to learn English. As in the original legislation, instruction emphasized the development of English *speaking ability* rather than *academic achievement*. The transitional design meant that basic subjects could be provided in two languages, while instruction in courses such as art, music, and physical education was preferably offered in English with other students within the regular school program. The reauthorization instituted efforts toward program evaluation. However, specifications for conducting program evaluations were never clear. This is perhaps one of the legislation's greatest weaknesses; little effort was directed toward compiling data on outcomes or program effectiveness (Leibowitz, 1980; U.S. Commission on Civil Rights, 1975).

Between 1968 and 1973, most of the federal bilingual funding went to support demonstration projects at the district level; little teacher training was available. The 1974 reappropriation allocated funds for special training programs to encourage reform, innovation, and improvement in graduate education programs preparing teachers to work in bilingual education. The Office of Bilingual Education and Minority Language Affairs (OBEMLA) was established to oversee teacher training and other program matters.

The second reauthorization, the Bilingual Education Act of 1978, continued to promote transitional bilingual education. Three major changes were implemented as a result of this reauthorization: (a) the focus of instructional programs changed, (b) programs were required to establish entry and exit criteria to determine student participation, and (c) a plan of research and information dissemination was initiated. Prior to 1978, the term *limited English speaking ability* (LESA) was used to designate students in need of transitional bilingual education. Instruction focused primarily on the development of oral language skills. Since the 1978 reauthorization, the term *limited English proficiency* (LEP) has been used. This change in terminology indicates a shift in program expectations to include emphasis on the four areas of language development: reading, writing, understanding, and speaking. The requirement that programs establish entry and exit criteria for participation was intended to assist school districts in determining which students were in need of bilingual instruction, since exited students were expected to function successfully in regular classrooms with their peers. The 1978 reauthorization permitted up to 40 percent of the participants to be native English speaking students, who were included only to learn about a different culture, not a foreign language.

The National Clearinghouse for Bilingual Education was established through the 1978 reauthorization as a means of carrying out national research agendas and informing the educational community. The Act mandated a series of research studies on personnel preparation and program effectiveness. The research component, known as the Part C Research Agenda, was the first major thrust toward developing a comprehensive research plan (Leibowitz, 1980).

In sum, the first decade of bilingual education has been characterized as resting on a limited, superficial research base (Baez et al., 1985). Executive guidelines for program implementation failed to draw on even the meager research available. From 1968 to 1978, the first decade of bilingual education legislation, efforts to put legislation into practice focused more on compliance than on student achievement (Baez et al., 1985). More recently, educators and policy-makers have been studying program outcomes. Much of this concern has developed as a result of the continued insistence of civil rights advocates and the intervention of the courts. These interrelated topics are discussed next.

Civil Rights Legislation

The Civil Rights Act of 1964 (P.L. 88-352) was a major triumph for the civil rights movement. It was the first federal legislation to require school districts receiving federal funds to guarantee that race, religion, or national origin would not be used as points of discrimination. Initially, the civil rights movement focused primarily on the problems of Afro-Americans. Success activated other groups to address their concerns regarding economic and social discrimination. As a result, civil rights legislation initiatives gathered momentum in the 1960s and 1970s (U.S. Commission on Civil Rights, 1975).

On May 25, 1970, the Director of the Office for Civil Rights issued a memorandum to all school districts with more than 5 percent minority language students. The purpose of the memorandum was to inform districts that they must take affirmative action to assist students in overcoming English language deficiencies. According to the directive, school districts could no longer assign students to classes for the mentally handicapped based on English language skill assessments. Tracking systems that kept students in dead-end programs were to be terminated. All school notices were to be in the parents' home language if the parents did not speak English.

The Equal Educational Opportunities Act of 1974 (P.L. 93-380) continued the efforts initiated in the earlier civil rights legislation. It codified the guarantee that minority language students have equal educational rights, even in school districts not receiving federal funds.

Litigation Affecting Policy

Litigation has been and will, in all likelihood, remain the principal recourse of minorities seeking equity within the public educational system (Baez et al., 1985). This review of bilingual education litigation is subdivided into four parts: (a) early court decisions that became cornerstones for future legislation and litigation, (b) litigation establishing precedent for the enforcement of executive policy, (c) recent decisions that emphasize the importance of educational outcomes, and (d) immigration litigation effecting educational policy.

CORNERSTONE LITIGATION. *Brown v. Board of Education of Topeka* (1954) raised the question whether separate educational facilities based on race could be equal. The 1954 *Brown* decision established that separate facilities could not be equal because such facilities deprive learners of equal protection under the law as guaranteed by the Fourteenth Amendment (Alexander, Corns, and McCann, 1969). Since *Brown*, equal protection under the Fourteenth Amendment has been interpreted to include the educational rights of minority language and handicapped students. As a result, the *Brown* decision became not only a legal landmark but also the cornerstone for further legislation and litigation.

Meyer v. Nebraska (1923) represents a less well-known landmark decision relating directly to the use of non-English languages in public schools. *Meyer* struck down state regulations prohibiting elementary school instruction in non-English languages. The Supreme Court found that developing proficiency in a non-English language was an acceptable educational endeavor and was not injurious to the health, morals, or understanding of ordinary students. Although the *Meyer* decision occurred in 1923, the advent of federal support for bilingual education in 1968 refocused national attention on similar concerns (McFadden, 1983).

When parents learned of the availability of federal support for bilingual education and realized that the school districts their students attended did not provide such services, class action suits were filed to require the implementation of bilingual instruction. The proceedings of several of these cases established legal precedents that further defined the requirements for appropriately meeting limited English proficient students' educational needs. In the 1974 *Aspira* decision, the court directed the school board for the City of New York to provide bilingual education for all Hispanic limited English proficient students and to desist from offering any course work in which students were unable to participate because of a lack of English fluency. A 1975 continuation of the decision required the school board to develop bilingual language assessment instruments to determine

which students were in need of bilingual instruction. The resulting product, the Language Assessment Battery, has become a nationally used test for kindergarten to grade 12. The development and dissemination of this test was a major step in enabling schools to determine limited English proficient students' dominant language and their proficiency in English and a non-English language (Keller and Van Hooft, 1982; Santiago-Santiago, 1978).

Lau v. Nichols (1974) is widely cited as influencing the implementation of bilingual education nationally. In 1971, a federal court decree ordered the San Francisco school district to integrate. All the students in the district were expected to master materials provided at each grade level. Of the 2,856 students of Chinese ancestry who did not speak English, only 1,000 were given supplemental English language instruction to meet grade-level achievement requirements. The California District Court and the Ninth Circuit Court of Appeal found no discrimination because all the students, including those with limited English proficiency, received the same curriculum and texts. The Supreme Court reversed these decisions, holding that basic English skills are at the core of all public education. Requiring students to learn English before effectively participating in the benefits of schooling was to make a mockery of the intent of public education. The Court further determined the English requirement to be discriminatory and in violation of students' civil rights. The *Lau* decision established that no proof of intentional discrimination was required, and determined it to be sufficient if instructional practices produced discriminatory outcomes. The discriminatory effects standard established in *Lau* was later reaffirmed in other similar civil rights cases (Leibowitz, 1982; McFadden, 1983; Sacken, 1984).

LEGAL PRECEDENT FOR ENFORCING EXECUTIVE ORDER. Several factors influenced efforts to develop a national second language education policy. One such factor was the *Lau* decision, which carried with it a requirement for developing district guidelines to meet the needs of limited English proficient students. By following these guidelines, referred to as the *Lau Remedies*, school districts could assure themselves of compliance with the Office for Civil Rights requirements and avoid charges of discriminatory practices. The guidelines require school districts to (a) identify all students whose first or home language is not English, (b) assess the language proficiency of these students, (c) determine students' academic level, and (d) place students in appropriate instructional programs. The *Lau* decision and the Justice Department's ensuing enforcement of the *Lau Remedies* encouraged state legislatures to establish their own regulations (Levin, 1983).

In the absence of national policy, the Office for Civil Rights began to treat the *Lau Remedies* as if they were law. Between 1975 and 1980, nearly 500 school districts negotiated compliance with the *Lau Remedies*. Not all compliance agreements were achieved willingly. The state of Alaska and several of its school districts attempted to prevent enforcement of the *Remedies (Northwest Arctic School District v. Califano)*. Their complaint was that the *Remedies* violated the Administrative Procedures Act because they were never published for public comment. As a result, a Notice of Proposed Rulemaking appeared in the August 1980 *Federal Register*, and testimony regarding the proposed regulations was taken in hearings across the country. The majority of the testimony was in favor of the proposed regulations. However, the majority of the written responses indicated that the regulations exceeded their jurisdiction (Levin, 1983).

Two major changes occurred during 1980 and 1981, the period of time when the *Remedies* were being considered as proposed executive rules, which influenced further development of bilingual education policy. The Department of Education separated from the Department of Health, Education and Welfare (P.L. 96-88), and Ronald Reagan won the 1980 presidential election. In 1981, the Department of Education was prohibited from publishing a final version of the *Lau Remedies* for public comment (Levin, 1983).

In summary, the outcome of executive efforts to establish a national bilingual education policy has had an overall negative effect on the use of languages other than English for content instruction. The Office for Civil Rights' piecemeal enforcement of the *Lau Regulations* fostered hostility against bilingual education. States declared that their sovereign rights had been intruded upon by federal enforcement efforts. The result was a movement away from a cohesive national policy for educating limited English proficient students (Levin, 1983).

EMPHASIS ON EDUCATIONAL OUTCOMES. The courts' perception of the role of the school in the assimilation process has been pivotal in subsequent bilingual education decisions. If the court believed the school's role was to promote a monocultural, monolingual society, then the use of languages other than English for purposes of instruction or social interaction was denied, as in *Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3* (1978). However, if public education were seen as multicultural, providing a means by which people from different languages and cultures could come together to achieve academic skills and develop an appreciation of mutual commonalities and diversities, then the court supported some form of bilingual education, as in

Cintron v. Brentwood Union Free School District (1978) and *United States v. State of Texas* (1982). In attempting to establish bilingual education alternatives, plaintiffs must overcome two obstacles: they must prove statutory violations of current programs, and they must convince the court that the proposed programs would rectify the effects of inadequacies (McFadden, 1983; Sacken, 1984).

Since *Lau*, three cases have further delineated requirements for meeting the educational needs of limited English proficient students: *Castaneda v. Pickard* (1981), *Keyes v. Denver* (1981), and *United States v. Texas* (1982). In all three cases, the instructional processes and the achievement outcomes of the students in question were considered in the final decisions.

In *Castaneda v. Pickard*, the court affirmed that proof of intent was not necessary in order for plaintiffs to experience discrimination as detailed in the Equal Educational Opportunity Act of 1974. School districts are expected to make a genuine effort to meet the learning needs of all the students within their charge. In *Castaneda*, the court outlined a three-point test to be used in determining a program's appropriateness. First, the program must be based on sound educational theory, or at least a legitimate experimental strategy. Second, the school must effectively implement the program. Third, the program results must demonstrate the program's effectiveness. The school system in the *Castaneda* decision had not provided competent teachers and adequate tests to measure student progress. The court found that, in effect, the school system had selected a program but had not effectively implemented it. In *Keyes v. Denver*, the court expanded on the three-point *Castaneda* test of program effectiveness. It required (a) that the district assess the needs of all limited English proficient students within its jurisdiction and place them in appropriate instructional programs, (b) that all programs for such students meet adequate personnel preparation standards, and (c) that in order to avoid subsequent learning problems for students exited from bilingual programs, there be adequate identification, instruction, and follow-up procedures to meet students' needs in regular classrooms. Emphasis in this decision was on creating a unitary, racially and ethnically nondiscriminatory school system (Baez et al., 1985). The *United States v. Texas* decision is significant because (a) it involved a comprehensive remedy within an entire state, rather than a school district, and (b) not only were statewide assessment, instructional, and monitoring procedures addressed, but this decision was instrumental in effecting legislative change within the whole state.

OTHER LITIGATION AFFECTING EDUCATIONAL POLICY. Recent attempts by Congress to develop effective measures to resolve the problem of

unauthorized immigrants have not been completely successful. Public officials in some of the states that that border Mexico maintain that cohorts of undocumented persons place an undue strain on the public social services. Efforts to curtail services to undocumented persons have raised some serious legal, economic, and social questions. Of prime importance to school administrators is the question whether the children of undocumented parents are entitled to free public education.

The *Doe v. Plyler* (1980) case was initiated by the undocumented immigrant parents of Mexican students against the Tyler, Texas, Independent School District. The suit alleged that the children's right to equal protection was violated because they were excluded from attending the local public schools free of charge. The suit challenged the 1975 Texas statute requiring districts to charge tuition to undocumented students enrolling in school.

The Supreme Court decision in this case clarified several important questions. The Court emphatically declared that school systems are not agents for enforcing immigration law. All students are entitled to a free public education, no matter what circumstances bring them to the United States. Minor illegal aliens have a fundamental right to protection in any state. The Court further determined that the burden undocumented aliens may place on an educational system is not an acceptable argument for excluding or deying educational services to any student. The Court held that the failure of society to provide students with an adequate education places an undue burden on all its members (Weintraub and Cardenas, 1984).

In sum, neither legislation nor litigation has provided a comprehensive national educational policy for addressing the needs of limited English proficient students. Civil rights legislation has focused on program participation. However, when financial constraints or program selection based on pedagogical appropriateness can be proved, then districts have wide latitude in making educational decisions with relative impunity (Sacken, 1984). Such is not the case when the needs of handicapped limited English proficient students are involved (McCarthy and Deignan, 1982). These learner rights are discussed in the following section.

SPECIAL EDUCATION LEGISLATION AND LITIGATION

Federal involvement in the area of special education has been gradual and incremental. Prior to the 1960s, the federal government exercised no leadership in the area, preferring to leave such matters in the hands of the states. As with bilingual education, the federal

involvement increased as early civil rights successes encouraged special education groups to seek solutions to social and educational concerns (Meranto, 1967).

Federal Legislation

In 1970, Congress enacted new legislation in response to concerns raised by special education advocates. The Education of the Handicapped Act (P.L. 91-230) firmly established the handicapped student as a category meriting the close attention of federal and state education agencies. Like the bilingual education legislation enacted two years earlier, it provided grants to institutions of higher education and to local and state education agencies to initiate special education programs.

Policy affirming students' educational rights was strengthened through the enactment of the Vocational Rehabilitation Act of 1973 (P.L. 93-112). Section 504 of this bill specifies that (a) students must be furnished with individualized educational plans (IEPs), (b) students' parents or representatives are entitled to be included in the development of individual plans, (c) parents or representatives must be given notice of school actions affecting the students' educational programs, (d) students are entitled to a due process hearing if the educational appropriateness of programs is in doubt, (e) students are entitled to instruction provided by appropriately and adequately trained teachers, (f) students or their representatives are entitled to review school records, and (g) handicapped students cannot receive fewer services than students in regular programs.

A confluence of legislative directives occurs when students are both handicapped and limited in English proficiency. The Education for All Handicapped students Act (P.L. 94-142), enacted in 1975, began to address some of the issues related to this special population of learners. This legislation encourages school systems to move handicapped students into regular education programs, where they may interact with their age peers and develop socially and intellectually within the least restrictive environment. Definitions and specifications contained in this act are important for limited English proficient, handicapped students because they specify at least some requirements for meeting these students' educational needs. For example, the required special instructional services may include not only classroom training, but also adaptive physical education and music programs, as well as instruction at home, in hospitals, or in other institutions. Transportation, developmental, corrective, and supportive services; psychological assessment and counseling; physical and occupational therapy; and recreation services may also be necessary for handicapped learners (Larson, 1985).

The major contributions of P.L. 94-142 to the education of limited English proficient students are in the area of assessment. Section 612 (5) (C) specifies that all testing and evaluation materials and procedures must be selected and administered so that there is no racial or cultural bias. All materials and procedures must be provided and administered in the child's native language or mode of communication, unless it is clearly not feasible to do so. The assessment and placement process cannot be made on the basis of any one single criterion.

In addition, Section 615 requires that states establish a system of procedural safeguards protecting the civil rights of handicapped learners and their parents or guardians. These safeguards include the right to examine all relevant records of identification, evaluation, and educational placement. Parents must be advised in writing of all changes in students' educational plans and must be afforded an opportunity to discuss the plan and present complaints about existing or projected programs. Parental involvement must be built into every aspect of the assessment and instruction process. Communication between the home and the school must be carried out in whatever language or means is necessary to include both the parents and students (Ballard, Ramirez, and Weintraub, 1982).

Combining the directives of the P.L. 94-142 legislation with the Civil Rights Acts and May 1970 Memorandum, a strong case can be made for bilingual special education for limited English proficient students experiencing learning difficulties in regular education programs.

Both P.L. 94-142 and the Equal Educational Opportunity Act require that school districts take affirmative action to locate students in need of special educational services. School districts are charged with the responsibility for using culturally and linguistically appropriate methods to locate students with handicapping conditions. Federal law is supreme and has precedence over state and local legislation. Only a few states have more comprehensive educational guidelines than the federal legislation. Only in these instances does state law have precedence (Roos, 1984).

Litigation Involving the Rights of Handicapped Learners

A major victory was achieved in litigation declaring that handicapped students have the right to attend public schools. Two of the court decisions establishing this right occured in *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (1972) and *Mills v. the Board of Education of District of Columbia* (1972). Since the early 1970s, when these two decisions occurred, education for the handicapped has moved steadily forward, sometimes through legislation and often as a result of litigation.

Establishing Access to Appropriate Education

Since the *P.A.R.C.* and *Mills* decisions, legal decisions have continued to affirm that handicapped students have the right to a free appropriate public education. What still remains at issue is the specification of what constitutes an appropriate education. The *Board of Education, Henrick Hudson School District v. Rowley* decision established a two-point approach to making individual decisions of appropriateness for students with handicapping conditions. First, the student's abilities and needs must be determined. Second, programs must be examined to determine whether they are beneficial in terms of the learner's individual requirements. If the student's needs cannot be met in a single placement, then the primary needs must be addressed first. Thus, once the student has been evaluated, decisions about appropriate services and programs are made. Only then can decisions regarding the availability of services be considered (Bartlett, 1985; Prasse and Reschly, 1986; Turnbull, 1986).

The courts have been influential in establishing the special educational rights of learning disabled students. Not only do learning disabled students have the same right to educational services afforded other students, but because of their special needs, they have the right to these educational services for a longer time than similar services available to the nonhandicapped. For example, if students are expected to have completed their secondary schooling by age 18, then learning disabled students who have not completed their secondary schooling may have an extended period of time in which to do so, perhaps up to age 21.

This right was affirmed in *Frederick L. v. Thomas* (1977). Until the late 1970s, most learning disabilities programs were usually available only from grades 1 through 4. Court decisions such as *Frederick L.* determined that programming must be available from the time students enter school until age 21. In addition, the courts have warned that *slow but sure progress* without specific long-term and short-term accomplishments is not an appropriate educational response to the needs of handicapped students. When districts lack meaningful plans of program implementation, judges have imposed their own guidelines and timelines, as in the *Frederick L.* case (Tillery and Carfioli, 1986).

Collaboration between regular and special education is essential. The importance of collaboration in providing appropriate educational services has been highlighted by the *Luke S. and Hans S. v. Nix et al.* (1982) decision. Prior to *Luke S.*, many school districts in Louisiana had a substantial backlog of referrals for special education assessment and placement. The court found that the length of time required to process assessment referrals was symptomatic of the overall lack of

collaboration between regular and special education. The *Luke S.* decision mandated that assessment procedures be both timely and competent. In addition, the court required that referral for special education be used only as a last resort after a variety of regular education interventions had been implemented, rather than as an immediate solution for students' lack of progress in regular education programs. A number of educational interventions must be implemented within the existing curriculum in the regular classroom setting before students can be referred for a complete psychoeducational assessment. As a result of *Luke S.*, the pressure to classify pupils as handicapped in order to certify their eligibility for services has been removed. Students receive support services within the regular classroom setting as a routine occurrence, whether the students are determined to be handicapped on not (Taylor, Tucker, and Galagan, 1986).

Litigation for Limited English Proficient Handicapped Students

Both overrepresentation and underrepresentation of minority language students in special education programs have been pressing educational issues for more than a decade. Fear of charges of discrimination and misassessment appears to make many states and school districts reluctant to place limited English proficient students in special education. As a result assessment and placement practices for these students vary widely across the United States (Figueroa, 1982; Heller et al. 1982; Ortiz and Yates, 1983). Errors in determining LEP students' educational needs occur most frequently when school personnel are unskilled in meeting the needs of limited English proficient students in regular education settings. Often, when special education placement of limited English proficient students is analyzed by category, a pattern emerges. Students may be underrepresented in the educable mentally handicapped category, and overrepresented in the category of learning disabilities (Brawer and Fradd, 1983; Ortiz and Yates, 1983).

Several recent legal decisions in the New York City school system underscore the extent to which the courts have been involved in the definition of appropriate educational programs for handicapped, limited English proficient students. Two such cases are *Lora et al. v. Board of Education of New York et al.* (1977) and *Jose P. v. Ambach* (1979). *Lora* was filed in June 1975 on behalf of Afro- and Hispanic-American students placed in special day school programs for the severely emotionally disturbed. The *Jose P.* case subsumed two separate but overlapping cases regarding the assessment and placement of handicapped learners, *United Cerebral Palsy v. Board of Education*

(1979) and *Drycia S. v. Board of Education* (1979). In both *Lora* and *Jose P.*, the courts retained jurisdiction and continued to review all district procedures related to the initial complaints through 1986, a period of almost ten years in the case of *Lora* (Fafard, Hanlon, and Bryson, 1986; Wood, Johnson, and Jenkins, 1986). The litigation involved in these two cases had a considerable impact on the New York City public school system's total special education program, which serves a population of approximately 116,300 students. After determining that the referral, assessment, and instruction process was cumbersome and time-consuming, the courts required the restructuring of the special education service delivery system. The court further ordered the City of New York Board of Education to expend all possible efforts to hire specially trained school personnel who were proficient in the first languages of the special education students in the district (Fafard, et al., 1986).

In *Lora*, the assessment practices of the New York City school system were found to be, in effect, racially and culturally discriminatory. Students were placed and maintained in special education without opportunity for a hearing or for periodic reevaluation. The court required a comprehensive remedy for this discriminatory situation, and retained the case under its jurisdiction in order to allow school officials to continue efforts to correct these discriminatory practices.

Implications of Legislation and Litigation

Malpractice liability has been a concern of medicine and law for some time. Educational malpractice has arrived more slowly because judges have been reluctant to determine which specific parties are responsible for students' failure to achieve. Unlike the one-to-one patient or client relationship with a doctor, the involvement of more than one person in the educational process complicates the establishment of responsibility and the apportionment of blame. However, the directive, prescriptive legislation of the Education for All Handicapped students Act of 1975 (P.L. 94-142) has served to clarify educators' responsibilities toward handicapped learners and to heighten the potential for educational malpractice litigation. The orientation of the legal system has become increasingly litigious, since attorneys are specializing in the legal aspects of education for the handicapped. While there remains little precedent for successful educational malpractice litigation, administrators can no longer afford to rely passively on questionable assessment procedures or instructional practices in fulfilling their responsibility (Zirkel, 1985).

Parent-Initiated Litigation

Several important trends emerge from research on parental efforts to improve educational services for their students. The way districts and parents use due process procedures greatly effects outcomes. The outcomes of hearings are more often in favor of school districts when they meet the requirements of the law, such as conducting comprehensive evaluations, presenting flexible prescriptions, and proposing programs based on individual need. Parents who are well prepared to argue their cases are more apt to achieve successful outcomes than parents who are not well informed or who rely exclusively on the services of lawyers to represent them. Logically, when parents are well prepared and present their cases clearly in terms of documentation, exhibits, and witnesses, they are more able to convince those who make determinations of the need for special services than are those parents with little knowledge or preparation. Available research indicates that parents have won in approximately 35 percent of the cases studied.

Parents from middle and higher economic levels tend to initiate more litigation and to win more often than parents of lower economic status. There is a reasonable explanation for this discrepancy. Parents have generally been denied the right to recover attorney fees incurred in the pursuit of equal educational opportunity, as in *Smith v. Robinson* (1984). This denial is a substantial deterrent to the pursuit of free and appropriate educational opportunity, at least from the parents' perspective (Flygare, 1984; Luckasson, 1986). More affluent parents are more able to afford special schools and services than less affluent parents; less affluent parents are more dependent on the good will of the public school system. The discrepancy in access to educational services available for affluent and poor families has implications for current administrative practices as well as for future legislation and litigation. Since the parents of language minority students are frequently at or below the poverty level, they are the least likely to seek special assistance from the courts or from hearing officers. The courts have been reluctant to intercede in educational issues unless there is a clear issue of discrimination or unequal access to educational opportunity. To avoid charges of discrimination, administrators need to ensure equitable treatment for all students (Clune and Van Pelt, 1985; Kuriloff, 1985).

Parental Perspective in Meeting Students' Needs

For administrators, the implications for current practice include examining the special educational needs of all students within both

special and regular programs, and organizing comprehensive programs to fully meet those needs beyond the minimal requirements established by the state or district (Winfield, 1986). Identification of special needs students is crucial, since inadequate or inappropriate identification of students can increase rather than ameliorate their handicapping conditions. If, as a result of such negligence, the students' initial problems are increased, the courts may hold district and school administrators responsible (Kurker-Stewart and Carter, 1981; Zirkel, 1985).

In implementing appropriate programs, administrators not only are responsible for the specified goals and objectives but are expected to provide adequate instructional materials, teachers and support staff trained in using appropriate educational strategies, and an appropriate instructional environment. Sound programs take into account the effects of instruction on achievement (Kurker-Stewart and Carter, 1981).

In working with parents, administrators can employ strategies to facilitate positive, cooperative working relationships. While formal documentation is essential, overreliance on formal application of policy cannot be counted on to preclude difficulties. Maintaining free and open communication with the family and involving parents in every aspect of the assessment, placement, and instruction process are essential. Many minority language parents are reluctant to visit school or to initiate a complaint. They do respond to invitations and to interactions with social workers, teachers, and administrators who convey a genuine sense of concern for the well-being and academic accomplishments of their students.

STATE LEGISLATION

There are limited English proficient students in all of the 50 states (McGuire, 1982). Only four states do not receive federal Title VII funds. Of these four, two require state certification and training in either ESL/ESOL or bilingual education, or both. One state has no statute, teacher certification, or federally funded bilingual or ESL/ESOL program. The other state prohibits bilingual education. Table 2-2 summarizes the most recent information on meeting the educational needs of limited English proficient students by state or United States territory. Information includes a profile of each state in terms of legislation, teacher certification, and the amount of Title VII funding (Forum, 1986b; Grosjean, 1982).

Sixteen states have at least one formal bilingual special education training program at the university level, while 26 have some form of

TABLE 2-2.
Educating the LEP Student: 1984–85 State Profiles

State or Territory	Legislation[1]				Teacher Certif.[2]		Title VII Funding[3]
	Mandates	Permits	Prohibits BE	No Statute	Bilingual Education	ESL	
Alabama				√			$ 0
Alaska	√						1,380,763
Arizona	√				√	√	2,148,151
Arkansas				√			258,000
California	√				√	√	23,241,751
Colorado		√			√		1,848,737
Connecticut	√						1,085,098
Delaware			√	√		0	
D.C.				√	√	√	1,911,702
Florida				√	√	√	4,064,533
Georgia				√			101,435
Hawaii				√		√	1,416,156
Idaho				√			468,569
Illinois	√				√	√	3,479,641
Indiana		√					668,758
Iowa	√						525,764
Kansas		√					3,316
Kentucky				√		√	308,357
Louisiana				√		√	1,703,195
Maine		√					418,219
Maryland				√			267,809
Massachusetts	√				√	√	4,105,023
Michigan	√				√		5,880,876
Minnesota		√			√	√	1,644,535
Mississippi				√			305,280
Missouri				√			120,000
Montana				√			1,632,103
Nebraska				√	√	√	267,971
Nevada				√		√	147,204
New Hampshire		√			√	√	0
New Jersey	√				√	√	2,236,909
New Mexico		√			√	√	4,642,232
New York		√			√	√	22,034,517
North Carolina				√		√	346,996
North Dakota				√			1,690,083
Ohio				√	√	√	1,564,612

(continued)

TABLE 2-2.
Educating the LEP Student: 1984–85 State Profiles (continued)

State or Territory	Legislation[1]				Teacher Certif.[2]		Title VII Funding[3]
	Mandates	Permits	Prohibits BE	No Statute	Bilingual Education	ESL	
Oklahoma				√			2,792,391
Oregon		√					1,673,266
Pennsylvania				√			1,368,279
Rhode Island		√			√	√	1,518,701
South Carolina				√			13,000
South Dakota		√					1,269,409
Tennessee				√		√	472,685
Texas	√				√	√	11,316,342
Utah		√					1,422,586
Vermont				√	√		508,476
Virginia				√		√	498,117
Washington	√				√	√	1,876,689
West Virginia			√				0
Wisconsin	√				√	√	598,570
Wyoming				√			305,789
Amer. Samoa		√			√		170,000
Guam	√				√		607,433
N. Marianas				√			0
Puerto Rico				√		√	1,992,388
Tr. Terr. of Pacific				√			841,104
Virgin Islands		√					83,608

[1]Whether state legislation mandates, permits, or prohibits special educational services for limited English-proficient (LEP) students, e.g., transitional bilingual education (TBE), English as a second language (ESL), immersion, and maintenance programs. For further information on individual states, contact NCBE.

[2]Whether state offers teaching certification in Bilingual Education.

[3]Federal funding under Title VII of the Bilingual Education Act, as amended.

Source: Compiled from information provided by each SEA listed.

Forum. (1986b). Educating the LEP students: 1984–85 state profiles, 9, 1, 5.

in-service teacher training in bilingual special education, according to a recent survey of the states. Only 1 state, California, has an endorsement in bilingual special education (Salend and Fradd, 1985; Salend and Fradd, 1986). Table 2-3 indicates the states where teacher training is available in bilingual special education.

TABLE 2-3.
Bilingual Special Education Teacher Training Within the States

State	Formal Training at the University Level	Available In-service Training
Alabama	No	No
Alaska	Yes	Yes
Arizona	Yes	Yes
Arkansas	No	No
California	Yes	Yes
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware	No	Yes
Florida	Yes	Yes
Georgia	No	Yes
Hawaii	No	No
Idaho	No	No
Illinois	Yes	Yes
Indiana	No	Yes
Iowa	No	No
Kansas	No	No
Kentucky	No	No
Louisiana	No	Yes
Maine	No	Yes
Maryland	Yes	Yes
Massachusetts	Yes	No
Michigan	Yes	Yes
Minnesota	No	Yes
Mississippi	n/a	n/a
Missouri	n/a	No
Montana	No	No
Nebraska	No	Yes
Nevada	No	No
New Hampshire	No	No
New Jersey	Yes	Yes
New Mexico	No	No
New York	Yes	Yes
North Carolina	No	Yes
North Dakota	No	No
Ohio	No	No
Oklahoma	No	Yes
Oregon	Yes	Yes
Pennsylvania	Yes	No
Rhode Island	No	Yes
South Carolina	No	No
South Dakota	No	No

(continued)

Table 2-3 (continued)
Bilingual Special Education Teacher Training Within the States

State	Formal Training at the University Level	Available In-service Training
Tennessee	No	Yes
Texas	Yes	No
Utah	No	Yes
Vermont	No	No
Virginia	No	No
Washington	No	Yes
West Virginia	No	No
Wisconsin	Yes	Yes
Wyoming	No	No

Adapted from Salend, S. J., and Fradd S. (1985). Certification and training programs for bilingual special education. *Teacher Education and Special Education, 8,* 198-202.

SUMMARY

Three types of legal forces have shaped policy for the education of limited English proficient students: federal legislation, executive orders, and federal judicial decisions. Each of the three forces can be subdivided into three different areas: bilingual, special education, and civil rights. Of these forces, federal legislation has proven to be the most influential. Three types of federal legislation impact on the education of limited English proficient students: bilingual, civil rights, and special education.

The Elementary and Secondary Education Act (ESEA) of 1968 has become one of the most influential pieces of educational legislation within the United States. By attempting to avoid charges of federal intrusion on local educational matters, the ESEA legislation specified that federally funded programs would supplement but not supplant the regular educational programs to be served. As a result, supplemental resource programs for bilingual and special education have not been integrated within the regular school program. The educational model fostered by the ESEA legislation promoted resource or pull-out programs rather than a cohesive school organization where all educational resources focused to meet the needs of all students. As a result, teachers who work in regular classrooms have not been expected to meet the special educational needs of linguistically different or handicapped students, nor have they been made responsible

for acquiring the specialized instructional skills required by these students. School systems have not organized to provide regular classroom teachers with the support they need to work effectively with diverse groups of students. In addition, the ESEA legislation established a remedial tenor for the education of limited English proficient students. Frequently this means that students who speak a language other than English are viewed as handicapped, although their only educational need is to become proficient in English.

From 1968, when the ESEA legislation was amended to include Title VII, the first Bilingual Education Act, until the 1984 Bilingual Education Act, the only federally funded instructional model was transitional bilingual education. Under the transitional model, students receive instruction in their first language and in English until they become proficient enough in English to function in the regular classroom. In 1984, five other instructional designs were included within the federal legislation. These include special alternative instruction, programs of developmental bilingual instruction, programs of academic excellence, English family literacy, and special populations programs.

The tenor of federal policy has been egalitarian, encouraging the inclusion of all students within the same educational system. In recent years the courts have insisted that it is not sufficient to have special needs students physically present within the regular school environment. Schools are expected to select instructional models that are appropriate to the particular needs of these students. A three-point test was established to determine the appropriateness of an instructional program: the program must be based on sound educational theory, it must be well implemented, and program results must validate its appropriateness. Districts are expected to monitor learning outcomes and to make educational adjustments so that all students have equal access to learning opportunities.

While both federal judges and legislators have been reluctant to prescribe exactly which measures must be taken to meet the needs of normal students who have limited English proficiency, they have been much more specific with regard to handicapped, limited English proficient students. Handicapped, limited English proficient students are entitled to all the educational rights and procedural safeguards established for other handicapped learners. In addition, the use of the first language for these students becomes less of an option and more of an essential component of assessment and instruction. Parental involvement is also an important part of successful programs for handicapped, limited English proficient students.

All states have limited English proficient students; only 28 have certification in bilingual or ESOL education. Twenty-six states have

some type of in-service or pre-service in bilingual special education. Only one state has an endorsement in bilingual special education. However, the long-range goal is to integrate as many students as possible into regular education classrooms. The sooner all teachers are trained in appropriately meeting the varying needs of a heterogeneous population, the better education will be for all students. The move toward providing bilingual and bilingual special education teacher training to all teachers, and integrating all students within one system, alerts educational administrators that they too must develop and update their skills and knowledge in the areas of bilingual and bilingual special education.

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